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AMERICAN DIPLOMACY IN THE EUROPEAN WAR

THERE has been no little dissatisfaction in the United States with the conduct of our diplomacy in the present world war. There are those who maintain that we should have espoused the cause of one or of the other group of belligerents. Both among these citizens and in the far larger body supporting the policy of neutrality, there are many who maintain that our government has failed to protect, as effectively as it could and should have protected, the rights of American citizens as neutrals and as non-combatants.

I. *Neutrality or discrimination*

Those opposing the policy of neutrality, or advocating a more or less unequal or discriminating neutrality, are divided by their sympathies, or by their views of national duty in international relations, into two groups. On the one side it is asserted that we should have protested against the invasion of Belgium, and that we should not have embarrassed the conduct of the war, on the part of Great Britain and its allies, by insisting upon the rights of neutral trade. A smaller number claim that the Entente Allies so clearly represent the cause of liberty and of civilization that we should from the outset have joined our armed forces to theirs. Of those who sympathize with the Central Empires or feel antipathy to British imperialism, none, so far as I know, has claimed that we should have taken up arms on the Teutonic side; but many assert that we should have met British restraint of neutral commerce, not with protests only, but with retaliatory action, by placing an embargo upon all trade with Great Britain and its allies, or at least upon

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the export of munitions of war. By many of those demanding that the export of military supplies be prohibited, it is indeed denied that such action would be unneutral; it is asserted, on the contrary, that under existing circumstances this export is unneutral. This last contention will be examined later.[1]

In so far as these divergent demands represent racial sympathies, they are, from the American point of view, deplorable and dangerous. In a country like ours, inhabited by people of many diverse origins, it would be fatal to internal peace and progress to permit our foreign policy to be controlled by any such influences. In so far, however, as these demands embody a sense of the solidarity of world interests and a feeling that a wrong committed against one nation is an injury to all nations; in so far as they are based upon a belief that international morals will never become international law in any proper sense of the word until the sanction of force—force of arms or force of economic discrimination—is employed by nations not directly and selfishly concerned to uphold the international order by punishing its assailants—in so far these demands deserve respectful consideration. They represent the lines of progress on which at some future period a durable world-order may be attained. Under present conditions, however, the maintenance of the peace and order of the world will hardly be secured by accepting the principle that it is the right and duty of every nation to support international right and to penalize international wrongs. So long as it is left to each nation to determine where the right lies in any controversy, divergent sympathies and interests will tend to produce opposing decisions; and anything approaching general action under the proposed principle might widen any war into a world war.

A special reason why the United States should have protested against the violation of Belgian neutrality is found by some of our citizens in the fact that the invasion of Belgium was not only a violation of international law but also a breach of treaties, and that, among the treaties by which the integrity of Belgium was safeguarded, there was one, a Hague convention concerning

[1] *Cf. infra*, pp. 513–517.

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the rights of neutral states, to which the United States was a party. Assuming what many international lawyers deny, that this convention was in force at the moment when Germany demanded for its armies a right of way through Belgium,[1] it may be pointed out that in such conventions or resolutions of international congresses it is not generally assumed that the signatory powers bind themselves to act, either singly or collectively, against any one of their number that may violate the convention. It should further be remembered that, in the Hague conferences and in other international congresses in which our government has participated, it has repeatedly stated that it is contrary to our traditional policy to intervene in any European political question.

In view of these facts it can hardly be maintained that our government was bound to protest against the invasion of Belgium. It of course had the right to protest, independently of its adhesion to the Hague convention, against a clear and admitted violation of international law. The objections to sending such a protest to the German government were, first, that under existing diplomatic practice it is so unusual for a state to protest against any action which does not affect its own rights and interests or those of its citizens, that our protest might reasonably have been viewed as an unfriendly act; and second, and this is perhaps the more important consideration, that it was and is difficult to see what practical object could have been attained by a formal protest. On the very day on which the German troops entered Belgium, the German Chancellor publicly admitted that Germany's action was illegal, that it was a wrong for which Germany hoped later to afford full compensation. An American protest would either have been met by a repetition of this confession and by the Chancellor's original plea of national necessity, or it would have elicited those accusations against the Entente Allies and the Belgian government which the German authorities advanced at a later period and which

[1] The dispute turns mainly upon the very debatable question whether Great Britain, which had not ratified this particular convention, was or was not virtually a belligerent on August 2, 1914.

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were intended to show that Belgium was not in fact a neutral state. Either answer would have terminated the incident; the latter answer by raising questions of fact which could not have been profitably discussed in diplomatic correspondence.

Personally, I feel that the view of Germany's conduct toward Belgium that was taken by the great majority of the American people should have been expressed by our administration, not indeed by a direct protest to the German government, but in another way, presently to be indicated.

In considering the general attitude that our government should have taken towards the belligerent powers, it must not be forgotten that, in a democratic country, any important action on the part of the government must be supported by public opinion; and that, if it is a question of taking sides in a war at the risk of being drawn into the war, any policy that deviates from strict neutrality must be approved by a very large majority of the people. To have taken the side of the Central Empires would assuredly not have commanded such support; and it seems highly improbable that our government would have received anything like general support in espousing or clearly favoring the cause of the Entente Allies.

II. *Preparations for defense*

Assuming that our government, under all the circumstances, was bound to remain neutral, and that its neutrality was not to be discriminatory, it is still open to question whether it acted with the degree of foresight, of energy and of consistency which was requisite for the effectual protection of its citizens as neutrals and as non-combatants. Any such inquiry may of course be discredited by insisting on the proverbial superiority of hindsight. Such an objection, however, taken without limitation, would effectually bar all criticism of political conduct. It is of course unfair to demand that our government should have foreseen the incalculable or even the improbable. It is quite fair, however, to maintain that it should have foreseen the probable, to say nothing of the inevitable.

It is a matter of common knowledge that in every great war the interests of the belligerents come into conflict with the in-

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terests and traditional rights of neutrals. It is also a matter of common knowledge that in international relations national rights are maintained in last instance by force, and that any state that hopes to secure recognition of its rights must be prepared to enforce them to the utmost of its ability. At the outbreak of the present war, the neutral states of continental Europe promptly mobilized their armies. Had Belgium possessed a militia comparable in efficiency to that of Switzerland, it is at least doubtful whether the Germans would have found that the quickest and easiest road into France led through that neutral country.

The geographical position of the United States protects it from the immediate perils against which Holland and Switzerland found it advisable to take arms; but with the outbreak of the war between Germany, France and England, it was obvious that conditions would recur similar to those that prevailed a century ago in the great naval struggles of the Revolutionary and Napoleonic period. It was obvious, after the British ultimatum of August 4, 1914, that the war would be waged in part at least on the high seas, and that the interests and rights of neutral commerce would be jeoparded. Under these circumstances, is it not clear that our government should have taken measures for the defence of our rights at sea analogous to those that Holland and Switzerland took for the defense of their territorial integrity?

It seems obvious that the President should have called Congress together, at the earliest possible date after the outbreak of the war, and should have asked for an appropriation to mobilize our navy—to put our war ships, as regarded personnel and equipment, into a state of complete efficiency. Such a proposal could have raised no partisan question. The necessity of such a step is shown by the fact that, in the last session of Congress, we were told by our naval experts that our fleet was still short of men, to say nothing of battle cruisers and scout ships.

During the last two years the connection between diplomacy and preparation for eventual war has been drastically illustrated in our own experience. When, in the second year of the war,

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the President began to urge adequate preparation for national defense, he asked his fellow citizens, in a public address delivered in a western city, whether they wished him to go on writing notes because there was nothing else he could do. When, after this agitation, he sent to the German government, last April, what really proved to be, this time, an ultimatum, the American note elicited from the German press, among other comments, the statement that the extent and vehemence of our demands was ludicrously disproportionate to our effective military and naval strength. Another German paper put it more succinctly: it said that the United States was brandishing a wooden sword. The really pathetic appeal of the President and the not unmerited sneers of the German journalists might have been forestalled by prompter action.

It seems obvious, again, that at such a special session of Congress the President might well have asked for power to meet invasions of our rights as neutrals and as non-combatants by placing an embargo upon exports to any offending country.

Had our government, at the beginning of the war, obtained the means necessary to make our naval force effective and, at the same time, authority to put economic pressure upon any state that might violate or impair the rights of our citizens, it is highly probable that some at least of the complications in which we were subsequently involved might have been avoided.

If, at the outbreak of the war, the President had felt moved to express the sentiment of a large part of our people regarding the violation of Belgian neutrality, such a special session would have afforded a fit opportunity, and the presidential message to Congress would have been the proper vehicle. An expression of the President's view of foreign affairs, in a message to Congress, is a matter primarily if not solely of American concern, with which no foreign state has any reason to occupy itself. A precedent could have been found in the fact that President Monroe employed this method of expressing American feeling, not only regarding the struggle between Spain and its American colonies, but also regarding the struggle between Turkey and its Hellenic subjects. If a president of the United States may express officially his sympathy with a European

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people striving to obtain independence by insurrection, surely he may express sympathy with a European people whose independence is illegally assailed. If President Wilson had based a request for the mobilization of the navy and for power to lay an embargo upon exports, not only upon general considerations—on the menace to neutral commerce necessarily resulting from a great naval war—but also and particularly upon the flagrant disregard of neutral rights and of treaty obligations with which the war had opened, and upon the probability that the wrong already committed would draw in its train, by way of retaliation, further and perhaps equally serious illegalities, he would have freed his own and the nation's conscience in a manner wholly unexceptionable, even from the point of view of existing international practice.

Simultaneously with the calling of a special session of Congress for the purposes above indicated, it would have been proper and wise to open negotiations with other neutral maritime states for joint deliberation and possible joint action in the assertion and maintenance of neutral rights at sea. It is said that such a step was considered by our State Department, but that it was deemed inadvisable to take it, for fear that we might be led by other states into action not in our interest. If this be really the ground on which our inaction was based, our State Department displayed a singular misconception of the nature of international coöperation. Any association of states is governed, like the old Polish Diet, by the rule of unanimity. At the same time, in spite of the theoretic equality of all participants, the influence of the several states in any international association is largely proportionate to their power, as was also the case in the Polish Diet, where the few magnates usually had their way. By our failure to initiate any such coöperation of neutrals, we lost an opportunity to render an important service to the world and also to increase the moral influence of our own country.

It may be objected that such a program as has been outlined, however desirable, could hardly have been carried through early in the war without serious discord in the ranks of the party in power, perhaps not without disruption of the cabinet.

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The well-known view of the then Secretary of State, that preparation for war rather promotes than averts conflict, would certainly have led him to oppose the plan of mobilizing our navy, and he would possibly have found support from one or more of his colleagues. It seems probable, however, that if the Secretary had resigned upon this issue, his action would have commanded little more popular support than it received in the following summer, when he resigned because our case against unrestricted submarine warfare was to be seriously pressed. Had the Secretary resigned in the autumn of 1914, when his unfitness for his post had already been demonstrated by eighteen months' trial, the peril to party cohesion would hardly have been more serious than it proved in the following summer, and the advantage to the administration would have been even greater.

III. *Restraints of trade*

It is not the purpose of this paper to consider all the questions with which our diplomacy had to deal during the first two years of the war—a task which would demand a volume—nor is it necessary, in touching upon the chief questions, to go fully into their more technical aspects. On some questions final judgment can hardly be rendered until the diplomatic correspondence is published in full, and until more exact knowledge is obtainable regarding disputed matters of fact. In its main lines, however, the policy followed by our government is well known. The task imposed upon it was to defend, so far as was practicable, the interests of our citizens; to find tenable grounds on which its remonstrances and demands could be based; and to use the means best adapted to secure the ends at which it aimed. How satisfactorily it has performed this task during the past two years seems neither an illegitimate nor a premature inquiry.

The first serious attack upon neutral shipping interests was the planting of submarine mines beyond the limits of territorial waters. According to the British contention, Germany initiated this proceeding early in the war, by planting mines in the English Channel. In retaliation, on November 3, 1914, Great

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Britain declared the North Sea "a military area" and announced that it had planted mines in that sea. It is alleged, however, that British mines were placed in that sea, outside of the limit of territorial waters, long before the "military area" proclamation. Against these proceedings our government entered no protest. We should, I think, have addressed protests to both powers. Our failure to make any such protest has proved the more unfortunate, because mines imperil not only the property of neutrals but also the lives of non-combatants. This is the case at least with the German mines. British control of the sea enables that power to offer to neutral vessels, if they are permitted to cross the North Sea at all, safe conduct by expert pilots to neutral ports. Germany can offer no such security. Our tacit admission that the planting of mines in the open sea is permissible has proved an embarrassment to us in our controversy with Germany regarding the employment of submarines against merchant vessels. Whenever it is uncertain whether a merchant vessel, even a vessel under the American flag, has been sunk by a submarine or by a mine, we are estopped from protest.

Our controversies with Great Britain have resulted from its attempt to suppress the entire import and export trade of its enemies—an attempt which necessarily involves the checking of all neutral trade with the Central Powers. It is not maintained, except by the Germans, that the object pursued by Great Britain is illegal. It is a legitimate measure of war to attempt to reduce an enemy country to submission by cutting off its supplies, including food supplies. We ourselves followed this course in our struggle against the Southern Confederacy. Prince Bismarck, after his retirement from office, inspired in the Hamburg newspaper that he used as his organ of publicity an article in which he pointed out that, if Germany should be involved in war with enemies of superior naval strength, they would assuredly attempt to cut off all importation of foodstuffs. He did not indicate that such an attempt would be illegal or even inhumane. His object was to urge the German government to give greater encouragement to German agriculture, and particularly to grain-growing.

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It is, however, maintained that the methods adopted by the Entente Allies to cut off all trade with the Central Empires are illegal. At the outset, the British government sought to realize its purpose by so expanding its contraband lists as to include nearly everything that Germany needed. It declared foodstuffs contraband, justifying this action on the ground that in Germany all foodstuffs had been brought under governmental control. By the Order in Council of March 11, 1915, it developed a new type of blockade. This order forbids voyages to or from German ports. It also authorizes the detention of vessels sailing to neutral ports and carrying goods with an enemy destination or which are enemy property; also the detention of vessels sailing from neutral ports and carrying goods which are of enemy origin or are enemy property. In the order itself these measures are stated to be retaliatory; but in the official correspondence and in unofficial British pamphlets it is maintained that they are a legitimate extension of blockade, adapted to modern and special conditions. They constitute an attempt to blockade the entire German Empire, partly by blockading Germany's ports in the North Sea, and partly by stopping all neutral trade with Germany that passes through the North Sea and the neutral countries of Holland, Denmark, Norway and Sweden. In so far as goods consigned to these countries are concerned, Great Britain invokes the "ultimate destination" rule, which was set up by our courts in our similar attempt to stop all trade with the Southern Confederacy; but it goes much further than we did in shifting the burden of proof, in assuming that goods consigned to Germany's neighbors are intended to be forwarded to Germany. In more than one respect the British blockade lacks the characteristics of a legitimate blockade as heretofore recognized. As far as the Baltic ports of Germany are concerned there is no blockade. Hence the blockade does not operate uniformly against all neutral countries. It is effective against all countries whose trade with Germany passes through the North Sea, against Spain, the United States and the Latin-American states, but it is not effective as regards the exportation of Dutch, Danish, Norwegian or Swedish products to Germany, by land or across the Baltic. It is similarly ineffec-

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tive as regards the exportation of Swiss products to Austria and to Germany. To a certain extent the Entente Allies are able to check trade between the Central Empires and their neutral neighbors by limiting imports to these neighbors, by permitting them to import only such goods and such quantities of goods as are apparently necessary for their own consumption. They are "rationed"; and they are not permitted to replace by importation goods of their own production which they export to Germany or to Austria. This, however, involves an unprecedented interference not only with the trade but with the domestic economy of these neutral states—an interference which is practicable only because of their comparative weakness.

What directly concerns us is that our trade with the Central Empires is cut off, and our trade with the neutral neighbors of these empires limited, by measures of at least doubtful legality. If they constitute an extension of the law of blockade, they seem to us to stretch this law to the breaking-point.

On the other hand, it should be noted that, in all cases where neutral commerce is subjected to restraint not clearly authorized by international law, the British government does not impose the penalties which attach to an attempted breach of blockade or to the carrying of contraband. Unless goods destined for Germany are absolute contraband, neither the vessel nor the cargo is forfeited. The vessel is regularly released after unloading in a British port. The goods are requisitioned by the government or sold in open market or ultimately released. In case of requisition or sale, the owners are either compensated or are promised compensation at the close of the war.

This whole system is obviously illogical. If the British measures in restraint of neutral trade are legitimate, action contrary to these measures should entail the customary penalties. If, on the other hand, these measures are illegitimate, they should not be enforced. It is, however, one of the strong points of the English that, in matters of conduct, they have the courage to disregard logic. They consider interests, general and individual, and they take general sentiment into account. So far as is consistent with the attainment of their purposes, they avoid injury to interests and offense to sentiment. The course

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which the British government has pursued has undoubtedly minimized the injury that its sweeping restraints inflict upon neutral trade and the resentment which these restraints necessarily excite.

It should be noted, further, that the British prize courts have apparently reverted to Lord Stowell's theory, that they are not bound to apply Orders in Council if these are clearly inconsistent with the recognized rules of international law. And back of these courts lies, as is recognized by the British government, ultimate recourse to international arbitration.

It is to be noted, finally, that the British Order in Council of March 11 and the identical French Decree of March 12, 1915 are, by their express terms, acts of retaliation against the German "war zone" proclamation of February 4, 1915. The effect of reprisals upon neutral rights is, however, a matter demanding special and separate consideration.[1]

Against Great Britain's action our government has repeatedly protested. In our protest against the Order in Council of March 11, our State Department said, March 30, 1915:

> The Order in Council of the 15th[2] of March would constitute, were its provisions carried into effect as they stand, a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area and an almost unqualified denial of sovereign rights of the nations now at peace.

Other and more recent controversies between our government and the British government turn on the detention and examination of postal matter carried on neutral ships, and on the "blacklisting" of neutral traders. As regards the first of these matters, our government insists that the action of Great Britain is unwarranted by previous international practice and constitutes a distinct breach of the Hague Convention of 1907. As regards the second issue—raised by the action of the British government in forbidding its subjects to trade with designated neutral persons and firms, because the trade of these persons

[1] *Cf. infra*, pp. 505-508.

[2] The date given by our State Department is that of the British note enclosing and explaining the order.

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and firms with Great Britain's enemies is asserted to be a channel through which an indirect trade between Great Britain's subjects and its enemies may be conducted—our government insists that these British measures operate within our territory and in the territory of other neutrals as an unfair and illegal restraint of trade. In neither of these matters has our government failed to formulate its protests, and all the questions involved have been kept open for final adjustment.

It has been persistently maintained by the Central Empires, and it is asserted by many of our own writers and speakers, that our government should have gone further—that it should have asked Congress for authority to impose a retaliatory embargo upon exports, or at least upon exports of military supplies, to the offending countries.

Here, again, we are confronted with the practical question whether such a policy would have received general support among the American people. In the early part of the war it would have been welcomed by our cotton growers and by other producers who had previously enjoyed an important trade with the Central Empires. Before long, however, many of these producers found that the increased demands of other European countries more than made up for the loss of the Teutonic markets. The steel industry and all industries that were or could be engaged in the production of military supplies found, almost from the beginning of the war, that the unprepared Entente Allies were anxious to purchase their products at almost any price. The profits derived from increasing sales at rising prices of those agricultural and industrial products that were needed in Europe stimulated the domestic brand for other products. For the most part, accordingly, American producers were directly or indirectly benefited. Had our government undertaken to close to American exports, or to a very large portion of these exports, the markets of Great Britain, France and Russia, when these powers had already closed the Central European markets, it would have inflicted upon the country a degree of economic injury for which no administration could have assumed the responsibility.

Against an embargo upon the export of military supplies

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there were other objections, based not on American economic interests but on the equitable claims of belligerent states and the vital interests of peaceful peoples. These objections will be considered later, in examining the charge that, in the matter of the munitions trade, America's attitude has been unneutral.[1]

The conduct of our diplomacy as regards Great Britain and its allies is, I think, fairly defensible. It has not seemed to our government either necessary or expedient to meet the restrictions placed by these states on our trade with retaliatory restrictions which, in harming them, would also harm ourselves. It has seemed sufficient to file our protests as a basis for subsequent claims. After the war the British government may concede that its measures were irregular; and the rules of international law will then be vindicated. Great Britain may be the readier to do this, because in future it may need these rules for the protection of its own trade. It may the more easily do this, because its action is claimed to be retaliatory.

IV. *Submarine warfare*

Between the United States and Germany there were, and are, far more serious controversies. In dealing with our protracted dispute with Germany regarding submarine warfare, it is necessary to make a sharp distinction between questions which arose and were discussed simultaneously and which at times appeared to be confused. We must distinguish between the so-called "cruiser warfare" and warfare conducted by sinking belligerent merchant vessels without warning.

The use of submarines in war is a novelty. As late as 1899 it was proposed, at a Hague conference, that their use be forbidden in war. This proposal failed; it was maintained that for the weaker states the submarine might prove a necessary weapon of defense. At that time, however, no employment of submarines was advocated or anticipated except against enemy war vessels. In a memorandum submitted to our government March 8, 1916, the German Ambassador stated, and quite correctly, that the submarine was "a new weapon, the use of which

[1] *Cf. infra*, pp. 513 517.

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had not yet been regulated by international law." From this premise he drew the amazing conclusion that, in using this new weapon, Germany "could not and did not violate any existing rule." This latter statement is of course untrue. In the use of a new weapon a belligerent nation may unquestionably violate well-recognized rules of international law. The armored tractor cars recently introduced by the British, for example, are new weapons, the use of which has not been regulated by international law; but it does not follow that Great Britain could lawfully use these new weapons to destroy enemy field hospitals. In the use of its submarines Germany has violated rules quite as well established as those which protect military hospitals.

In using its submarines against merchant ships, Germany in fact invokes established rules of international law. It claims for submarines the rights accorded to cruisers. Cruisers have the right to capture enemy vessels and neutral vessels carrying contraband. Whenever it is impossible or even inexpedient to take a captured vessel into any of the captor's home ports for condemnation, it is permissible to sink it. Due provision, however, must always be made for the safety of the non-combatants, the crew and any passengers.

Inasmuch as the employment of submarines against merchant vessels was without precedent, it was open to the United States government to question the legitimacy of so using them. I think that we should have contested this point, because the submarine is not fitted to do cruiser work. In using the cruiser against merchant vessels, a captured vessel may exceptionally be sunk; in using the submarine the captured vessel must always be sunk. The exception ceases to prove the rule; it supplants the rule. Even if the captor's home ports be not blockaded, as are Germany's, the submarine is not able to put prize crews on captured vessels, nor is it able, without serious risk to itself, to convoy such vessels to a home port. What is of much more consequence, in sinking a captured merchant vessel the submarine is unable, in the vast majority of cases, to make proper provision for the safety of the non-combatants. At the best, it can only permit them to embark in open boats, without regard to weather or distance from land.

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In the President's address to Congress, April 19, 1916, and in the note, commonly known as the "Sussex" note, which was simultaneously delivered by our Ambassador in Berlin to the German Foreign Office, it is asserted that our government took this position from the outset. The following passage is to be found in both documents:

> It has therefore become painfully evident that the position which this government took at the very outset is inevitable, namely, that the use of submarines for the destruction of an enemy's commerce is of necessity, because of the very character of the vessels employed and the very methods of attack which their employment of course involves, incompatible with the principles of humanity, the long-established and incontrovertible rights of neutrals and the sacred immunities of non-combatants.

As a matter of fact this position was first taken in the first "Lusitania" note, May 13, 1915. Before this we had practically acquiesced in the use of submarines for the visitation, search and capture of merchant ships. Not only had we made no protest against such use, but in the note of February 20, 1915, which was addressed to both groups of belligerents, and in which we endeavored to induce them to make mutual concessions, one of our proposals was "that neither will use submarines to attack merchant vessels except to enforce the right of visit and search." In the first "Lusitania" note, our demand was that the submarine should visit, like a cruiser, and should not sink without warning; and all that was said about the impropriety of such visitation was *obiter dictum*. In the second American note on submarine warfare, June 9, 1915, there was no allusion to the illegality or inhumanity of the use of submarines to visit and search merchant vessels. Our demand was still that the submarine should visit, not sink without warning. And in the third American note on the subject, July 21, 1915—a note written after the German government had so far yielded to our remonstrances as to direct the commanders of its submarines to observe the rules of cruiser warfare—our State Department said:

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The events of the past two months have clearly indicated that it is possible and practicable to conduct such submarine operations as have characterized the activity of the Imperial German Navy within the so-called war zone in substantial accord with the accepted principles of regulated warfare.

In the note sent by our State Department to Great Britain and its allies in January 18, 1916, in which it was suggested that the practice of arming merchant vessels be discontinued, the use of submarines against an enemy's commerce was defended, "since those instruments of war have proved their effectiveness in this practical branch of warfare."

Even in the "Sussex" note of last April, in which our government reverted to its earlier position regarding the use of submarines for visit and search, all that is said on this point is again *obiter;* for the demand is that submarine warfare shall be conducted, so far as possible, according to the rules of cruiser warfare. And in the German note of May 5, which our government found satisfactory, the German government undertakes only "that merchant vessels . . . shall not be sunk without warning and without saving human lives, unless the ship attempts to escape or offers resistance." Our government has accordingly accepted, as satisfying the demands of legality and of humanity, the giving to the non-combatants of "that poor measure of safety," as our State Department has described it, which is to be found in small open boats on the high seas.

In conceding the legitimacy of the employment of submarines against merchant vessels, so long as the rules of cruiser warfare are observed, our government has virtually recognized the right of Germany to capture by its submarines and to sink, not only belligerent vessels, but also neutral vessels, if after visit and search these are found to contain contraband, even conditional contraband. Of this alleged right, which other and weaker neutrals contest, Germany has made extensive use. Up to the end of October, 1916, it had destroyed, according to Norwegian statements, one-seventh of the Norwegian merchant marine. The reason it is not exercising this alleged right against us is that the relations between Germany and the United States are

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governed in this matter by the Prussian-American treaties of July 11, 1799 and May 1, 1828. Under these treaties, as interpreted by our State Department, Germany is not entitled to destroy our vessels carrying contraband; as interpreted by the German Foreign Office, however, these treaties do not impair Germany's right to destroy such vessels, but impose upon the Imperial government the duty of paying in each case for vessel and cargo. This difference of opinion is to be submitted to arbitration. Meanwhile, "in order to furnish to the American government evidence of its conciliatory attitude," the German government has promised not to destroy American vessels carrying conditional contraband, but reserves the right to destroy such vessels if they carry absolute contraband.[1]

The activities of one or more German submarines off our coast in the autumn of the present year indicate the possibility that something like a blockade of our ports might conceivably be maintained by this class of war vessels; and so long as the Germans conform to the rules of cruiser warfare as interpreted by our State Department, our government seems estopped from raising any objections. The only question open is whether Germany is or is not free to sink American ships carrying absolute contraband, subject to liability for the value of the vessels and their cargoes.

The admission on the part of our government that submarines may be employed to visit, search and capture merchant ships, belligerent or neutral, has proved extremely embarrassing in the discussion of the status of armed merchantmen. According to existing international law, a merchantman has the right to carry mounted guns and to use them to resist capture. If it makes use of its armament, it becomes a combatant and may lawfully be sunk in the combat; but the fact that it carries guns for defense does not convert it into a warship.

These rules, as Germany contends, grew up under conditions

[1] See the correspondence regarding the sinking of the "William P. Frye," March 31, 1915 to Sept. 19, 1915. The fact that the Prussian-American treaties covered the case does not seem to have been appreciated by our State Department until the German Foreign Office pointed it out. German diplomacy doubtless welcomed the opportunity to show Germany's scrupulous adherence to treaty obligations.

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that no longer prevail. They were established when piracy was rife; they were perpetuated during the period when privateering was admissible. In recent times, when merchantmen have been threatened with capture only by regular warships, their right to resist capture has not been invoked or used. Accordingly, the German authorities argue, this right, which has long ceased to be reasonable, has been lost by disuse. Armed merchantmen should therefore be treated as warships. The German government claims that British merchantmen in particular should be so treated, because, as they allege, Great Britain has armed some at least of its merchant vessels not for defense but for aggression. Proof of this purpose is found in instructions alleged to have been issued to British merchant captains, directing them to fire upon any German submarine that approaches them.

The Entente Allies maintain, on the other hand, that the only reason why the right of merchantmen to resist capture has not been employed in recent times is that resistance to regular warships had become hopeless. The fragility of the submarine, the fact that it may be sunk by a single shot, has again changed the situation, and the ancient right of defense may legitimately be exercised against this new type of warship. Denying, as they do, that submarines may lawfully be used to visit, search or capture merchantmen, the Entente Allies assert that the attempt so to use a submarine, its mere approach, is an act of unlawful aggression; that the merchantman thus approached may at once use against the submarine any weapon it possesses; and that such action is defensive.

So long as Germany claimed and exercised the right to sink enemy merchantmen at sight and without warning, whether these were armed or unarmed, the status of the armed merchantman was a matter of little immediate importance. When Germany and Austria announced that the commanders of their submarines had been instructed to observe the rules of cruiser warfare against enemy merchantmen, provided these were not armed for offensive purposes against German or Austrian submarines, the status of the armed merchantman became a burning question.

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In the note of January 18, 1916, sent to Great Britain and its allies, our State Department endeavored to bring about an agreement between the belligerent powers, by which the Central Empires should definitively abandon the practice of sinking unarmed merchantmen without warning, and Great Britain and its allies should waive their right to arm their merchant vessels. In this note our government stated that it was

> impressed with the reasonableness of the argument that a merchant vessel carrying armament of any sort, in view of the character of submarine warfare and the defensive weakness of undersea craft, should be held to be an auxiliary cruiser. . . .

Such an agreement as our State Department was endeavoring to negotiate would have involved the recognition by Great Britain and its allies that submarines could legitimately be employed to visit, search and capture merchant vessels. Failing to obtain the suggested agreement, our State Department reverted to the position that the existing rules of international law regarding armed merchantmen must be observed. Such a position is defensible, but it can hardly be expected that Germany should regard it as reasonable. In his note of January 18, Secretary Lansing himself said that

> if a submarine is required to stop and search a merchant vessel on the high seas . . . it would not seem just nor reasonable that the submarine should be compelled, while complying with these requirements, to expose itself to almost certain destruction by the guns on board the merchant vessel.[1]

Had our government consistently maintained the position it occasionally took, that submarines should not undertake cruiser warfare against merchantmen because they can not observe cruiser rules, the risk they run in trying to observe these rules could have been cited in support of its argument.

The most acute controversy between our government and

[1] The risk that submarines run in attempting to stop and search merchantmen is appreciably diminished when the submarines hunt in couples. Even if a merchantman succeeds in destroying one of its assailants, it is almost certain to be sunk by the other.

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that of Germany began with the German Admiralty proclamation of February 4, 1915, in which notice was given that the waters surrounding Great Britain and Ireland were to be treated as a "war zone"; that after February 18 enemy merchant ships might be destroyed without making provision for the safety of their crews and passengers; and that neutral ships might be exposed to the same peril. The German government disclaimed any intent to attack neutral vessels, but indicated that such attacks might be made by mistake, particularly in view of the fact that British vessels were making use of neutral flags.

The protest raised by our government, in its note of February 10, dealt primarily with the menace to neutral shipping. Our warning that the German government would be held to "a strict accountability" for the destruction of American vessels or the lives of American citizens did not clearly indicate that we should insist upon that accountability if American lives were lost in the sinking of belligerent merchant ships. The note could be so interpreted; but it was equally capable of being interpreted in the opposite sense. That the prime solicitude of our government at that time was to avert the possible destruction of American ships and their crews is indicated by the fact that, on the same day, February 10, it asked the government of Great Britain to forbid the use by British vessels of the American flag. To this request the British government declined to accede.

In one instance, an American vessel, the "Gulflight," was sunk, May 1, by a submarine, and several American lives were lost. In other instances American vessels were attacked: the "Cushing," April 28, by a German aeroplane; the "Nebraska," May 25, by a submarine. In its note of February 16, replying to the American note of February 10, the German Foreign Office defended the "war zone" proclamation as a legitimate reprisal against various illegal acts and practices of the British government; explained that it had given neutral shipping due warning; and stated that neutral vessels disregarding this warning "bear their own responsibility for any unfortunate accidents." This position it abandoned May 11, promising that if a neutral ship, even a ship carrying contraband, should be sunk

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without warning, "the German government will unreservedly recognize its responsibility therefor." This change of attitude was perhaps occasioned by the energetic reaction of American public sentiment against the sinking of the "Lusitania," May 7. It may well have seemed wise to sacrifice a weak if not indefensible position in order not to complicate the defense of a position which seemed stronger.

The promise of the German government to make compensation for the sinking of neutral ships without warning was not accepted by our government as a satisfactory adjustment of the controversy raised by the "war zone" proclamation. In the first "Lusitania" note, May 13, our State Department said:

> Expressions of regret and offers of reparation in case of the destruction of neutral ships sunk by mistake, while they may satisfy international obligations, if no loss of life result, cannot justify or excuse a practice, the natural and necessary effect of which is to subject neutral nations and neutral persons to new and immeasurable risks.

The controversy raised by the sinking of the British steamer "Falaba," March 28, in which one American citizen lost his life, and by the sinking of the "Lusitania," in which more than one hundred Americans perished, continued until May 5, 1916. At some time in the summer of 1915, the German government issued to its submarine commanders an order not to sink "liners" without warning. The sinking, without warning, of the liner "Arabic," July 9, by which more American lives were sacrificed, was regretted and disavowed October 5, and the German Ambassador informed our State Department that the orders issued by the Emperor to the commanders of German submarines "have been made so stringent that the recurrence of incidents similar to the 'Arabic' case is considered out of the question." Subsequent to the sinking of the "Arabic," however, similar incidents occurred, in which the submarines attacking passenger steamers without warning were acknowledged either by the Austro-Hungarian or by the Turkish government to be sailing under their respective flags; and on March 24, 1916, the British channel steamer "Sussex" was sunk by a German submarine without warning and with further

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sacrifice of American lives. The American note of April 18, which the President read to Congress and which ended with a definite threat of the severance of diplomatic relations, elicited the German note of May 5, in which the controversy was shelved rather than settled by the pledge that the orders given to German submarine commanders, "not to sink merchant vessels without warning and without saving human lives, unless the ship attempt to escape or offer resistance," should be maintained and enforced until further notice. There is, in this note, no reservation of the right to sink armed enemy vessels, nor is there any waiver of such a right; this phase of the question is simply ignored. The diplomatic victory of the United States, if victory it be, is limited to the securing of a sort of armistice as regards unarmed merchantmen.

In the controversy between the two governments on this matter—eliminating the question of the status of armed merchantmen—the right to sink enemy merchantmen without warning was based by the German government on two grounds: the right of retaliation, and the right of a belligerent to intercept its enemy's military supplies.

As regards the latter point, the German case may fairly be stated as follows. It is not disputed by the German government that the usual and recognized method by which a belligerent intercepts contraband destined for its enemies is by visit, search and capture. Even when the merchantman carrying contraband is an enemy vessel, it is the usual practice to visit the vessel in order to determine its nationality. Because of the fragility of the submarine, however, it is unsafe for it to attempt to observe this practice where an enemy merchant vessel is concerned, and especially dangerous when such a vessel carries munitions of war, which it is naturally expected to defend, if defense be possible. When the vessel attacked is known to be an enemy vessel—and there was no doubt of the identity of the "Lusitania"—and when the fact that it is carrying ammunition is known—and in the German note of May 28, 1915, it is asserted that the "Lusitania" had on board no less than 5400 cases of ammunition—there is really no need of visit or search. Not having cruisers on the high seas, and

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being forced to rely on its submarines, Germany, as Count Bernstorff put it, adapted its method of warfare to the "peculiarity" of its new weapon. This entire line of argument is summed up in the German note of May 28, 1915, in one sentence:

> The German government feels that it acts in just self-defense when it seeks to protect the lives of its soldiers by destroying munitions destined for the enemy *with the means of war at its command*.[1]

The position taken by our government on this question was, from the outset, substantially the same that it finally took upon the question of the right of a submarine to sink an armed merchantman without warning.[2] Our State Department has consistently refused to admit that the introduction of a new weapon automatically changes the rules of international law. Until the law is changed by general acquiescence or by express convention, the new weapon must be used in compliance with existing rules. If it is unable to do any particular kind of military work without overriding these rules, it should not attempt such work. On the question of the use of the submarine against an unarmed enemy vessel, this position is not only legally tenable, but highly reasonable. The results which the German submarines have obtained under the system of cruiser warfare indicate that the "Lusitania," which was not armed, could have been arrested by warning shots; that its captain could have been forced, under threat of immediate destruction of his vessel, to put its crew and passengers into boats; and that the liner could then have been sunk without any such sacrifice of life as resulted from its destruction without warning. Had the "Lusitania" summoned assistance by wireless, this would have been an act of resistance, and its immediate destruction would have been legitimate—in so far, at least, as submarine warfare against merchantmen can be regarded as legitimate.

In the later German notes this justification of unrestricted submarine warfare—the necessity of intercepting military supplies destined for Germany's enemies—is not emphasized. In

[1] Italics are the writer's.

[2] *Cf. supra*, p. 500.

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the note of May 5, 1916, it is not mentioned. The German government concentrates its defense upon the right of reprisal.

V. *Right of retaliation*

The justification of the "war zone" proclamation as an act of retaliation or reprisal has not, in my judgment, been satisfactorily traversed by our State Department. Its failure to find the proper answer to this plea is the more regrettable, because in this war nearly every breach of law by either group of belligerents has been based, in whole or in part, on the right of reprisal. In so far as the reasoning contained in its notes can be disengaged from their somewhat rhetorical form, the position of our government seems to be that reprisal may be legitimate as against an enemy that is violating the rules of international law, but that the reprisal must not injure neutrals. In its note of March 30, 1915, to the British government, protesting against the Order in Council of March 11, our State Department says that the British plea of retaliation is doubtless to be interpreted as

> merely a reason for certain extraordinary activities on the part of His Majesty's naval forces and not as an excuse [for] or prelude to any unlawful action. If the course pursued by the present enemies of Great Britain should prove to be in fact tainted by illegality and disregard of the principles of war sanctioned by enlightened nations, it cannot be believed, and this Government does not for a moment believe, that His Majesty's Government now wish the same taint to attach to their own action or would cite such illegal acts as in any sense or degree a justification for similar practices on their part in so far as they affect neutral rights.

In its note of July 21, 1915, to the German government, our State Department asserts that "a belligerent act of retaliation is *per se* an act beyond the law, and the defense of an act as retaliatory is an admission that it is illegal." So sweeping an assertion is quite indefensible. Reprisal is a right sanctioned by international law, and an act of retaliation so sanctioned is not *per se* beyond the law. The grain of truth in these utterances is that when a belligerent invokes the right of reprisal, he admits

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that *except for the right of reprisal* his action would be illegitimate. Here again, what our government really asserts is that the right of reprisal cannot be invoked in support of any act that injures neutrals. In the first "Lusitania" note, our State Department refuses to admit that measures of retaliation "operate in any degree as an abbreviation of the rights of American shipmasters, or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality." Again, in the note of July 21, 1915, it is said that acts of reprisal "are manifestly indefensible when they deprive neutrals of their acknowledged rights."

If these statements assume, as they seem to assume, that the rights of neutrals are determinable without taking any account of the belligerent right of reprisal, they simply beg the question. Neutral rights are in some degree abridged when they come into collision with belligerent rights. How far they are abridged in any particular case is a question of international law. In international law it is well settled that if a legitimate act of war on the part of a belligerent state, directed primarily against its enemies, inflicts incidental injury upon the persons or property of neutrals, neither those neutrals nor the states to which they owe allegiance have a right to raise protest or demand satisfaction. And since international law authorizes reprisals, a legitimate reprisal is *per se* a legitimate act of war. In order to find any ground for protest, the protesting state must show that the particular reprisal of which it complains is illegitimate. To do this involves a much more careful examination of the law of reprisal, and of the limits within which the right of reprisal may be exercised, than our State Department has attempted to make.

It is clear that reprisal must be based on a prior violation of international law by the adversary. The assertion on the part of a belligerent that his adversary has been guilty of illegal conduct does not bar neutrals incidentally injured from inquiring into the truth of such an assertion. In our controversy with Germany regarding the "war zone" proclamation, however, we could not question the truth of the German assertion that Great Britain had violated international law, since we had repeatedly made the same assertion.

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It is clear that any act of reprisal must be directed primarily against the enemy, not against a neutral. The German invasion of Belgium would not have justified a British invasion of Holland by way of retaliation; nor did it justify the Entente Allies in invading Greek territory. Whatever justification may be plead for this latter act, it is not to be found in the right of reprisal. Similarly, Germany's breaches of international law gave Great Britain no right that it did not previously possess to place restrictions on neutral trade with Germany; nor did the British restraint of such trade, however illegal, give Germany any right that it did not previously possess to interfere with neutral vessels trading with Great Britain. Here again, whatever justification may be found for the action of either belligerent, none can be found in the right of reprisal. The sinking of the "Lusitania" and of the "Sussex," on the other hand, were acts primarily directed against an enemy of Germany; and unless these acts were illegitimate as against that enemy, they did not become illegitimate simply because citizens of a neutral country were passengers on those enemy vessels.

It is claimed, indeed, that there is a difference, as regards the exercise of the right of reprisal, between land warfare and sea warfare. If in the present war an American were killed by a bomb dropped by a French aeroplane upon Karlsruhe, in reprisal against German action in dropping bombs on an undefended French city, our government would assuredly have no ground of complaint against the French government. When, however, an attack is made upon a belligerent steamer on the high seas, and this attack is of such a character that except for the right of reprisal it would be illegal, the situation is alleged to be different; and the fact that there are neutral passengers on the steamer is asserted to make the attack illegitimate so far as they are concerned. This distinction is based primarily upon the assertion that any German city belongs to Germany, while the seas belong to all men. The "Lusitania," however, was legally British territory. A second ground for the distinction is found by our State Department in the fact that the American passengers on the "Lusitania" were exercising their right to travel on their lawful errands. Waiving possible ques-

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tions as to the nature and content of a "right to travel," it is clear that in embarking on the "Lusitania" they placed themselves under British jurisdiction and became "temporary subjects" of Great Britain. It is hard to see how their position and rights can be differentiated from those of an American citizen traveling on his lawful errands within Germany's territorial jurisdiction. The legal position of the American passengers on the "Lusitania" seems indistinguishable from that of the British passengers, and their rights, as against Germany, were not American rights, nor even neutral rights, but non-combatants' rights.

It is clear, however, that there must be some limits to the exercise of the right of reprisal. I venture to suggest that such limits are to be found in a comparison between the alleged offense and the attempted reprisal as regards their respective degrees of illegality and of inhumanity. In the interest of the world, it must be recognized that belligerents are not permitted to overbid each other in illegality and in inhumanity. This should not be permitted even as between belligerents; for otherwise, through reprisal and counter-reprisal, each exceeding the other in barbarity, war would inevitably revert to its most primitive form, and there would be nothing to prevent a final burning of prisoners at the stake. Nor should overbidding be permitted in reprisals which tend to injure neutrals. An act of reprisal must not involve a more serious impairment of neutral rights than the alleged offense for which the reprisal is taken. For otherwise, through reprisal and counter-reprisal, all neutral rights might eventually disappear in such a world war as is now raging.

If our government had taken this position, it would, I think, have enlisted the support of all neutrals, and its suggestions would probably have been accepted, at least after the establishment of peace, by all the countries now at war. And it would have found a clear and tenable ground on which to protest against the German "war zone" proclamation. Applying the principles suggested, it could have said to Germany: Your proposal to sacrifice non-combatant lives and to endanger the lives of neutrals is not a legitimate retaliation for any measure, however illegal, which Great Britain has adopted; for the taking of life is no proper retaliation for the taking of goods.

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There is some evidence that the principles which I am endeavoring to formulate were, at least subconsciously, in the minds of Americans and Germans alike; and that to some extent these principles, although not explicitly stated, are implicit in the utterances and conduct of both governments. Germany has tried to place British restraints upon neutral commerce on the same plane with its own destruction of non-combatant lives at sea, by alleging that the purpose of the British measures is to inflict upon millions of non-combatants death by starvation. It is, however, highly improbable that the British government now expects or ever expected to accomplish any such result, any more than the North, in the War of the Rebellion, expected to destroy the population of the Southern States by starvation. In such cases, the real expectation is that, by cutting off imports of food, the blockading power may inflict upon the people of the blockaded country such privations as may weaken their fighting spirit. The Germans themselves tell us, and with apparent truth, that such a result as the starvation of the German people cannot be attained by the most effective blockade of their Empire. Under these circumstances, their retaliation is illegitimate, because it inflicts certain death upon non-combatants by drowning, because of a purpose attributed to their enemy, which Germany itself claims cannot be realized, to destroy German non-combatants by starvation.

The principle here suggested, the application of the proportional test to the offense and the reprisal, seems also to be recognized in many of the utterances of our State Department. In the first "Lusitania" note, our government asserts that the natural and necessary effect of the German measures of retaliation is "to subject neutral nations to new and immeasurable risks." Our government has further insisted, throughout its controversy with Germany, on the impossibility of placing on the same plane economic injury and the sacrifice of life.

VI. *Mistakes and omissions*

The conduct by our government of its controversy with the German government is open to serious criticism. Its protests and demands have been substantially justifiable, but the grounds

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on which they have been based have not always been wisely chosen. This is notably the case as regards its position in the matter of reprisals. In other matters our government seems to have taken its initial attitude without full consideration of all the aspects of the problems presented, and without prevision of the logical and necessary consequences of its first decision. In some of these matters it was forced later to shift its ground, which gave to its conduct an appearance of vacillation. In some instances, as a result of unnecessary and inadvisable concessions, as in the matter of submarine warfare against merchant vessels, it has been obliged to make its final stand, as in the matter of armed merchantmen, on grounds that are far from satisfactory.

Our government has been criticised, and with reason, for its failure promptly to support its protests against German action either with action or with the threat of definite action. Between the German "war zone" proclamation and the note in which the German Foreign Office promised that its submarines should observe the rules of cruiser warfare until further notice, there was a stretch of fifteen months, filled with repeated losses of American lives and repeated notes of protest. Whether it be true or untrue that in the spring of 1915 the then Secretary of State gave the Austro-Hungarian Ambassador to understand that the language of our first notes was intended chiefly for home consumption; whether the belief of the Teutonic diplomatists that our government was not likely to take any decisive action was or was not based on any official assurances or intimations; it is clear that until the spring of 1916 the notes of our State Department were not taken very seriously. In order to account for this result, or lack of result, it is not necessary to assume that either of the current allegations just noticed is true. The fact that our government went on sending notes, without action or threat of definite action, sufficiently accounts for such a belief.

It is not disputed that there is, as the President and the Secretary of State have repeatedly pointed out, not only in notes to the German Foreign Office but also in open letters and in speeches to the American public, a very great difference between our controversies with Great Britain and those with Germany. It is the difference between illegal restraint of neu-

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tral trade and illegal destruction of neutral lives. Economic losses can to some extent be made good; human life is inestimable. A government can not discuss indefinitely what it regards as the illegal killing of its citizens. It cannot submit controversies of this character to arbitration unless, pending arbitration, it can obtain a stay of killing. The situation is precisely the same that arises in controversies between individuals when irremediable damage is being inflicted. In such cases municipal law authorizes the complainant, pending the judicial determination of all questions in dispute, to demand an injunction.

At the time when the controversy aroused by the German "war zone" proclamation was becoming acute, the administration would probably have received very general support in taking any action that seemed necessary to protect American lives. Germany's conduct of the war in general; its treatment of the Belgian people, and in particular (because in this instance there was no dispute regarding the facts) the exaction of heavy contributions from Belgian cities whose trade had been destroyed; an inept and irritating propaganda, conducted by semi-official German agents; conspiracies, suspected although not yet proven, to prevent, by criminal methods, the manufacture and export of American munitions of war—these and other circumstances were arousing, even before the German naval administration opened an unrestricted warfare against belligerent merchant vessels, a stronger and more general anti-German feeling than had existed at the outbreak of the war. During the spring and summer of 1915 anti-German feeling in the United States apparently reached its highest point. It was diminished later by growing resentment at British invasions of neutral and in particular of American rights, notably by British interference with postal correspondence and by the British blacklist. In May, 1915, our government had indisputable ground for action in the sinking, without warning, of American vessels; and the anger aroused by the sacrifice of American lives in the sinking of the "Lusitania" would have insured general support of any action short of a declaration of war—possibly even of such action.

What effective action, however, could our government have

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taken? The rupture of diplomatic relations, which it first definitely threatened a year later, seemed to many Americans undesirable. Its effects, so far as Germany was concerned, would have been purely moral; and it would have had the practical result of terminating the activities of American agents in relieving the necessities of the Belgian people as well as the good offices of our embassies in the Central Empires in their surveillance of detention camps and military prisons. A declaration of war, even had it been supported by American public opinion, would have been inadvisable in our state of military and naval unpreparedness. If, as was said, Germany could not have waged effective war against us, neither could we have waged war effectively against Germany. Moreover, conditions in Mexico seemed not unlikely to call for the full exercise of such effective military strength as we possessed. During the past summer and autumn, although we were nominally not at war with Mexico, nearly all our available military forces were sent into that country or were stationed on its northern frontier.

An embargo upon a non-existent trade may, on its face, seem absurd; but if the President had obtained from Congress, early in the war, the power to prohibit exports to any country that should disregard our rights as neutrals, it seems probable that an intimation that this power might be used against the Central Empires would have produced no slight effect. An embargo upon American exports to the Central Empires would at once relieve the British and French governments of a very considerable portion of the work that they are now doing in cutting off supplies from those empires; and if such an embargo were imposed upon our exports to their enemies, our government could very properly coöperate with them in making our embargo effective. We could utilize all the machinery which they have devised for preventing American goods from entering Germany through the neighboring neutral states. What would perhaps seem even more important to the German government, such coöperation between the United States and the Entente Allies would remove, for the time, the chief occasions of friction between them—friction which the Central Empires probably still regard, and certainly regarded in the spring of 1915, as a

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valuable asset of their diplomacy. If at the moment when the German embassy at Washington was warning the American people by newspaper advertisements that the "Lusitania" might be sunk, that embassy had been notified that the President would retaliate for the sacrifice of any American lives by prohibiting all trade with the Central Empires, it is probable that the "Lusitania" would have reached its port unmolested. It is even more probable, it is almost certain, that the threat of an embargo, then or later, would have secured at a much earlier date all that was secured by the ensuing year's diplomatic correspondence.

VII. *The munitions trade*

Although the unrestricted submarine warfare on commerce conducted by Germany and its allies seemed to our government more illegitimate than the unprecedented restrictions imposed on neutral trade by Great Britain and its allies, and although the injuries inflicted upon American citizens by the Central Empires seemed far graver than any for which Great Britain and France were responsible, the attitude of our government was substantially the same towards both belligerent groups. It omitted no word to Germany or to Great Britain that seemed adapted to secure the recognition of the rights of American citizens, and it took no action against either power for the enforcement of those rights. Under these circumstances it is somewhat surprising that our government should be charged, as it has been and is charged by the governments of the Central Empires and by their adherents in the United States, with unneutral conduct, because it did not take action to compel Great Britain to abandon its illegal measures. Those who make this charge do not hesitate to explain what action our government should have taken: it should have prohibited the export of munitions of war.

Before this action was demanded for the purpose just indicated, it was demanded on the ground that, under existing circumstances, the American manufacture and export of military supplies was unneutral. It was not asserted that international law imposes upon a neutral state any duty to prevent or restrict

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such exports. It was claimed, however, that international equity required such action on the part of the United States. It was claimed that we should have taken cognizance of the fact that the Central Empires were unable to import military supplies from over sea, and that our export of such supplies was solely to their enemies. It is fair to sell to all belligerents, but unfair to sell to one side exclusively. It was also pointed out that in most wars there are numerous neutral states from which belligerents may draw military supplies; it is ordinarily not a question whether a belligerent shall buy such supplies, but where he shall buy them; whereas in this world war the United States is the only important industrial country at peace, and consequently its citizens enjoy a practical monopoly of the business in question. This fact, it was urged, made it especially unfair that they should be permitted to sell to one group of belligerents exclusively. It was asserted, finally, that the scale upon which the manufacture of military supplies was organized in this country, after the outbreak of the war, was in conflict with the spirit of neutrality. It was not a question of continuing trade previously established, but of developing what practically amounted to a new industry. When this new industry was organized for the service of one group of belligerents exclusively, the country in which it was organized became practically a base of military operations against the other group.

If, however, the spirit of neutrality required that we should consider the situation of the different belligerents and discriminate in the interest of fair play, is it not obvious that we were bound to consider the whole situation? In addition to the fact that the Central Empires could not draw military supplies from us, were we not entitled and bound to consider the fact that they stood in no such need of arms and munitions as did the Entente Allies? When an armed man attacks an unarmed adversary, the fight, to ordinary human sentiment, is not a fair fight. A similar feeling is aroused when a nation, prepared for war to an extraordinary and unprecedented degree, attacks an ill-prepared neighbor. This, it will be said, is sheer sentimentality; but is the opposite position wholly rational? Is it reason, or is it sentiment, that asserts that Germany and Austria

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were entitled to take every advantage of their superior preparation for warfare on land, but that we should not have permitted Great Britain and France to draw any advantage, of which we could deprive them, from their superior naval preparation and their resultant control of the sea?

Again, were the Entente Allies not justified in anticipating that any temporary shortage of military supplies could be made good in part by imports; and if our government had made it impossible for them to buy such supplies in the only neutral market which the war had left open to them, would not its action have been justly regarded by them as unfair? And if it be admitted that an unprepared nation is entitled to draw military supplies from neutral countries, does it not follow that it is entitled to draw all it needs?

In the Austrian note of June 29, 1915, in which the argument against the American export of military supplies is elaborated, it is assumed that the established rule, according to which a neutral power is not bound to prevent the export of military supplies to a belligerent, is based entirely on the equities of the neutral manufacturers, who are not to be deprived of "the export trade that was theirs in time of peace." The equities of ill-prepared belligerents are entirely ignored.

Considering the entire situation, we may well assert that our government, in following the letter of the law, observed its spirit also. If this conclusion be not accepted, it must at least be conceded that the possibility of an honest difference of opinion, or of sentiment, indicates that international equity is a dangerously elastic measure of national duty.

Trade in munitions of war seems to many objectionable; to some it seems immoral. It is repugnant to our feelings that men should enrich themselves by selling wares that are made to destroy their fellows. In international law, the shipment of military supplies from a neutral to a belligerent country, appears to be regarded as an act neither illegitimate nor altogether legitimate. A neutral government may not itself furnish military supplies to a belligerent, but it is under no duty to prevent individuals within its jurisdiction from exporting such supplies. They do this, however, at their risk. Such supplies and the

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ships that carry them are subject to capture and forfeiture. In sanctioning such forfeiture, international law may be regarded as penalizing the trade. National law, on the other hand, treats this trade, in the absence of special restrictions, as legitimate. Our courts, state and federal, take cognizance of contracts for the sale and transportation of military supplies to belligerent countries and award damages if these contracts are not performed.[1]

If a general prohibition of the sale of munitions of war to belligerents would promote peace, such sales should of course be prohibited. Until war is abolished, however, such a general prohibition would place unprepared nations, particularly those whose manufacturing industries are little developed, at the mercy of well-prepared nations, and particularly of those nations that have developed great manufacturing industries. For their own preservation, all non-industrial states would be forced to buy in time of peace and carry in stock military supplies of every sort sufficient to last through the longest war in which they might conceivably be involved. Much of this reserve would deteriorate; much would become relatively useless because of the progress of the military arts; and if a great industrial state should secretly develop and hold in readiness new and more effective agencies of destruction, as was the case before the outbreak of the present war, the non-industrial adversary, if shut out from neutral markets, would be unable to provide itself with the necessary equipment for defense. In view of these facts, it seems clear that the prohibition of the munitions trade in time of war would impair the rights of peaceful peoples. It might even imperil their independence.

In reply to the arguments of the Central Empires, our State Department did not fail to call attention to the fact that it had never been the policy of the United States to make extensive preparations for eventual war, and that, in any emergency, we were in the habit of relying upon purchase of military supplies from neutral states. It was, in fact, hardly intelligent diplomacy

[1] Kent, J., in Seton and Co. *v.* Low, 1 Johnson's N. Y. Cases, 1, 5, 6 (1799). Pond *v.* Smith, 4 Conn. 297, 303 (1822). Northern Pacific Railway Co. *v.* American Trading Co., 195 U. S. 439, 465 (1904).

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on the part of the Central Empires to ask a nation so habitually unprepared as ours to set a precedent against trade in such supplies during war.

In the controversy aroused by its "war zone" proclamation, the German government, as we have seen, endeavored to connect the question of its right to conduct an unrestricted submarine warfare with the question of the trade in munitions of war. As we have seen, it argued that it was obliged to sink unarmed merchant vessels without warning in order to check this trade.[1] In invoking the right of reprisal, it sought to connect the question of submarine warfare with that of the British measures in restraint of neutral trade. It endeavored, for a time, to make action on the part of our government against Great Britain a condition precedent to any modification of its submarine warfare. At present, although it has ordered its submarine commanders to observe the rules of cruiser warfare, it has expressly reserved the right of reverting to its earlier policy of unrestricted submarine warfare, in case the United States does not succeed in inducing Great Britain to abandon its illegal restraint of neutral trade.

Our State Department has consistently refused to admit that the adjustment of any controversy between the United States and Germany can properly be made to depend on the adjustment of our controversies with any other power. It might have gone further; it might have said that there was no connection between the British restraints of neutral trade and the German policy of unrestricted submarine warfare, except that which the German government sought to establish by invoking the right of reprisal; and that the United States government did not recognize the taking of non-combatant lives as a proper or legitimate reprisal for the restriction of neutral trade.

The German government finds our position unneutral because we, as the German Ambassador at Washington asserts, have "acquiesced" in Great Britain's violations of international law. If protest without action or threat of action is acquiescence, it might equally well have been said, at the time of Count Bern-

[1] *Cf. supra*, pp. 503, 504.

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storff's utterance and for many months afterward, that we had acquiesced in Germany's violations of international law.

To say that the United States is unneutral because it permits the export of military supplies to Germany's enemies, or because it has not compelled Great Britain to modify its Orders in Council, seems to most Americans absurd. To most of us it seems that our government has observed strict neutrality. In so far as the Central Empires and those who support their cause really feel that the attitude of the American government has not been neutral, their feeling is probably due to the fact that its observance of a strict neutrality has been of greater advantage to the Entente Allies than to the Central Empires. The fact that its conduct has given offence to both belligerent groups, and to those Americans whose sympathy with either group obscures their judgment, is the best proof that it has been really neutral.

Conclusions

The chief criticism that can be directed against our government is that it failed to discharge its full duty in protecting the rights of its citizens against those aggressions to which neutral rights are exposed in every war. Its greatest fault was in its lack of prevision; and particularly in its failure to arm itself at the outbreak of the war with the means of exercising naval force and economic pressure in support of its just claims. Lacking these means, it was condemned to inaction where action seemed requisite. It could not even threaten action, because its inability to take decisive action was notorious.

Minor faults, perhaps, but serious faults nevertheless, are to be found in the failure of our government to discover and to formulate the most tenable grounds for its protests and demands. For the development of international law this failure was most unfortunate; for international law, like every law that develops through precedents, depends for its certainty on the proper interpretation of precedents; and this is seriously compromised if the cases that may become precedents are not intelligently stated and argued.

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THE FEDERAL CHILD-LABOR LAW

THE QUESTION OF ITS CONSTITUTIONALITY

THE Child-Labor Law enacted by Congress at the last session is a step farther in regulation and a step farther in the assertion of congressional power than has ever before been undertaken. Doubts of its constitutionality have been expressed. Most lawyers agree that this legislation stretches to the limit of its elasticity the commerce clause of the Constitution. The statute will be tested in the courts, and while no one may with certainty foretell the ultimate conclusion, or what has more irreverently been called the last guess, a review of some of the Supreme Court's interpretations may be suggestive.

As introductory to a consideration of the statute, it may be noted that the courts in construing it will look only to the statute itself. It is, of course, common knowledge that the statute was designed to restrain and abolish the employment of child labor in mines and factories. But the motives of the individual members of Congress actuating them in enacting a statute are not subject to inquiry.[1] Public policy and expediency have formulated a legal fiction that the motives of legislators are constitutional and pure. And, however violent a presumption this seems, it is no less conclusive. The statute must stand or fall by itself.

So we are brought squarely to the question: Is the statute a regulation of interstate commerce?

The commerce clause of the Constitution is the soul of brevity. It reads: "Congress shall have the power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes."[2] This is the warrant for all the power Congress may exercise over interstate commerce. It is the source of all congressional sovereignty over that subject.

[1] United States *v.* Des Moines etc. Co., 142 U. S. 510, 544; Amy *v.* Watertown, 130 U. S. 301, 319; Weber *v.* Freed, 239 U. S. 325, 333.

[2] Article 1, section 1.

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And every act of sovereignty must be authorized by this charter. Any act not authorized by this delegation of power is unconstitutional. It is at once evident, therefore, that Congress has no power of regulation (for the purpose of this inquiry) outside of interstate commerce, and within interstate commerce its power is only the power to regulate. So there are two things it is essential to define—interstate commerce, and the power to regulate.

I. *Interstate commerce.* Interstate commerce has a current meaning quite clear, but in its legal aspect its boundaries are sometimes shadowy. Its extent is sometimes described as a domain, or a sphere, or a zone. But it should be remembered, in using these figures of speech, that its boundaries are not like territorial boundaries. Interstate commerce exists relatively. We may imagine it as being comprised in a kind of magic circle. Within the circle is the power of Congress. Without the circle, the power vanishes, like that of the magician of the fairy tale.

Traffic between the states, or intercourse, is fundamentally commerce.[1] But the instrumentalities of that traffic also come within the scope of interstate commerce, and the instrumentalities of instrumentalities. For example, an interstate carrier is an instrumentality. A workman carrying a bolt to repair a bridge on the line of an interstate carrier is also an instrumentality.[2] The chain of dependencies is endless. It is like the House that Jack Built. Cause and effect are followed and embraced with a relentless logic. If the connection exists, the magic circle envelops it, and the jurisdiction attaches.

Inasmuch as interstate commerce exists relatively, the same instrumentalities may engender rights and duties within and without the circle of interstate commerce. This results in a dual control over the same agencies in their different spheres.

A freight car loaded with goods shipped between intrastate points must be equipped with the safety appliances Congress has required, if the train is an interstate train.[3] The rate charged

[1] Gibbons *v.* Ogden, 9 Wheaton 1, 189.

[2] Pederson *v.* Delaware L. and W. R. Co., 229 U. S. 146.

[3] Southern Railway Co. *v.* United States, 222 U. S. 20.

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for the goods in the same car is not within the congressional power. A brakeman on the car may claim the protection of the Employers' Liability Act and the Hours of Service Act,[1] because his duties are within the interstate movement. A caretaker of the goods, if employed by the same carrier, may not claim these safeguards. These examples may illustrate how the same instrumentalities in their relative spheres come within and without the magic circle. An instrumentality, it is seen, leads a Dr.-Jekyl-and-Mr.-Hyde existence.

In some instances it may seem at first glance that the power of Congress extends beyond the circle of interstate commerce for the purpose of removing obstructions. For example, intrastate rates are not within the sphere of interstate commerce, and are specifically excepted from the jurisdiction of the Interstate Commerce Commission. But if an intrastate rate produces unjust discrimination against interstate rates, the regulatory power removes the discrimination.[2] But it is the injection of the discrimination, or the obstruction, into the magic circle that enables the regulatory power to operate. The regulatory power exercises no other sovereignty over the obstruction except to abolish the obstructive feature. It does not seek to regulate it or govern it in any other way. The foreign matter comes under the regulatory power only to the extent of its interference. As soon as the interference, or obstruction, has been removed, the foreign matter is no longer within the domain of interstate commerce, and consequently no longer subject to the regulatory power.

This power is very different from a power exerted over an instrumentality of an instrumentality, as above described, for in the latter case the subject itself, so far as it extends into the sphere of interstate commerce, is under all the regulatory power of Congress. In the former case the subject-matter is not considered as a part of interstate commerce, and the general regulatory power does not attach. It simply abolishes the obstruction.

[1] New York Central R. R. *v.* Carr, 238 U. S. 260.

[2] Houston, East & West Texas Ry. Co. *v.* United States, 234 U. S. 342.

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This attempt to define the extent of interstate commerce may strike a layman as a fine example of the legal quibble. But if it be remembered that Congress is a body of strictly limited powers, and that it exercises no powers save those specifically delegated to it, it will be seen that these boundaries of interstate commerce are the limitations upon the power of Congress, and must be borne in mind in considering the child-labor statute.

II. *The power to regulate.* In the past the power of Congress to regulate has been asserted under three theories of regulation.

1. The direct regulation of traffic and its instrumentalities. In Northern Securities Co. *v.* United States[1] Mr. Justice Harlan said:

> Again and again this court has reaffirmed the doctrine announced in the great judgment rendered by Chief Justice Marshall for the court in Gibbons *v.* Ogden, 9 Wheat. 1, 196, 197, that the power of Congress to regulate commerce among the states and with foreign nations is the power "to prescribe the *rule* by which commerce *is to be governed.*"

These rules for the government of commerce have been promulgated by Congress in various statutes to promote the efficiency of instrumentalities, and generally to aid and foster interstate traffic. The following statutes are examples: The Act to Regulate Commerce (establishing the Interstate Commerce Commission); The Act prohibiting carriers from transporting their own commodities;[2] the Safety Appliance Acts;[3] the Hours of Service Act;[4] the Employers' Liability Act;[5] the

[1] 193 U. S. 178, 335. See also Gilman *v.* Philadelphia, 3 Wall. 213, 225; County of Mobile *v.* Kimball, 102 U. S. 691, 696; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196, 204.

[2] Sustained in United States *v.* Delaware & Hudson Co., 213 U. S. 366.

[3] Sustained in Southern Railway Co. *v.* United States, 222 U. S. 20, 27.

[4] Sustained in Baltimore and Ohio R. R. Co. *v.* Interstate Commerce Commission, 221 U. S. 612.

[5] Sustained in Mondou *v.* New York, New Haven and Hartford Railroad Co., 223 U. S. 1.

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Boiler Inspection Act; the Transportation of Explosives Act; the Animal Industry Act;[1] the Act preventing payment of seamen's wages in advance.[2]

2. The regulation of interstate commerce by the removal of obstructions. This power may be exercised when the navigability of a navigable stream is impaired by an obstruction in a tributary stream, which is itself not navigable, and not within the regulatory power.[3] The example of intrastate rates discriminating against interstate rates has been cited above.[4] The case of In Re Debs[5] is a further illustration.

3. The regulation of interstate commerce by the exercise of a police power for the protection of morals and health. This police power has been exercised in the following statutes: The Wilson Act (regulating the shipment of intoxicating liquors;)[6] The Food and Drug Act;[7] The White-Slave Act;[8] The Lottery Act.[9]

Under one of these theories of regulation the Child-Labor Law must come. There is current the opinion that it falls under the exercise of police power.

Congress has no general police power. It may exercise a police power only over a subject-matter already under its jurisdiction by virtue of some authority delegated to it by the Constitution. And the exercise of any police power by any sovereignty must be in respect to a matter or thing menacing, threatening, harming or injuring the morals, health or welfare of that sovereignty's subject. Police power is not arbitrary power. It has limitations which must not be over-stepped. Therefore to uphold the Child-Labor Law under the theory of

[1] Sustained in Reid *v.* Colorado, 187 U. S. 137.

[2] Sustained in Patterson *v.* The Eudora, 190 U. S. 169.

[3] United States *v.* Rio Grande Irrigation Co., 174 U. S. 690, 709.

[4] See n. 2, p. 521, *supra*.

[5] 158 U. S. 564.

[6] Sustained in In re Rahrer, 140 U. S. 545.

[7] Sustained in Hipolite Egg Co. *v.* United States, 220 U. S. 45.

[8] Sustained in Hoke *v.* United States, 227 U. S. 308.

[9] Sustained in Champion *v.* Ames, 188 U. S 321.

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police power, it must be clear that interstate commerce, (the domain over which Congress has a sovereignty) is menaced.

Child labor is an undoubted menace to health and morals, but the menace has a locality. Can the menace be said to exist during the transportation of the child-labor product? It cannot be said that the products of child labor are so tainted by their unhappy origin that during transportation they constitute a menace to morals or health. The menace exists where the child labor is employed.

The exercise of the police power in prohibiting the use of interstate transportation for such products will operate of course as a deterrent. But it seems clear that thereby the police power becomes operative outside of the domain of interstate commerce. And beyond the borders of that domain the police power of Congress, like the king's writ beyond his kingdom, does not run.

The distinction between the Child-Labor Law and the Food and Drug Act, or the White-Slave Act, is obvious. In the commerce regulated by these latter acts, the product during transportation is tainted, or the immoral purpose is being consummated during transportation, and the menace or wrong exists in the sphere where Congress is supreme. In the Lottery Case the transportation of the lottery ticket was a part of the crime, and the menace to morals existed during transportation. The menace in the case of child labor is over and done with when the product is manufactured. The offense to morals or health has been completed and cannot reasonably be said to attach to the inanimate object. Its venue was the place of manufacture. The product has become dissociated and disconnected from its parentage. The umbilical cord has been cut. When the product enters the domain of interstate commerce no menace to health or morals exists.

The statute cannot come under the second theory outlined above. A process of manufacture cannot obstruct or injuriously affect interstate commerce when the product of that process is indistinguishable from the product of other processes. So we must look to the first theory of regulation to find a warrant for the statute under consideration.

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So far, Congress has attempted to regulate traffic and the instrumentalities of traffic only for the purpose of promoting the safety, efficiency and general welfare of interstate commerce. It has never claimed an arbitrary power of promulgating rules that do not tend to promote the objects above named.

It has been said that the Commodities Clause of the Hepburn Act does not come under this theory of regulation. But an examination of that statute shows it was undoubtedly enacted to promote the welfare of interstate commerce.

In the case of New Haven R. R. *v.* Interstate Commerce Commission,[1] the court held that a carrier would not be permitted to fulfill a contract to sell and deliver coal at a price less than the cost of the coal at the mines, plus the legal rate of transportation. Otherwise, by buying and selling commodities, and as an incident hauling its own commodities free, the carrier might disregard in effect all the laws against rebating and unjust discriminations, under the veil of buying and selling. The power to prohibit this commercial activity, which threatened that equality of treatment which the Act to Regulate Commerce was passed to foster, was held to be within the regulatory authority. When the Commodities Clause was attacked in United States *v.* Delaware & Hudson Co.,[2] the reasoning in the New Haven Case was referred to in sustaining the statute.

It is, therefore, beyond question that the Commodities Clause is a regulation of an instrumentality for the purpose of promoting the efficiency and welfare of interstate commerce. There can be little if any analogy between the Commodities Clause and the Child-Labor Act.

In the case last cited,[3] the Chief Justice declared that if certain contentions of the government were sound, it would become necessary for the court to determine the grave constitutional question

> whether the power of Congress to regulate commerce embraces the authority to control or prohibit the mining, manufacturing, production

[1] 200 U. S. 361.

[2] 213 U. S. 366.

[3] United States *v.* Delaware & Hudson Co., 213 U. S. 366, 406.

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or ownership of any article or commodity, not because of some inherent quality of the commodity, but simply because it may become the subject of interstate commerce.

The court found it unnecessary to answer this question. But is not this the question which the Child-Labor Act presents?

Even in so far as Congress has gone, the framers of the Constitution would no doubt be amazed at the extent to which regulation has been stretched. But the Constitution is a more elastic instrument than is commonly believed. Lord Bryce pointed out in his *American Commonwealth* that "the American Constitution has necessarily changed, has changed in the spirit with which men regard it, and therefore in its own spirit." And he quotes the language of Judge Cooley: "For practical purposes the Constitution is that which the government in its several departments and the people in the performance of their duties as citizens, recognize and respect as such; and nothing else is."

In 1807–8, Congress enacted the Embargo Laws, prohibiting foreign commerce. The Supreme Court never passed upon their validity, but Chief Justice Marshall in Gibbons *v.* Odgen[1] inferentially affirmed them by way of *obiter dicta*. Regulation ordinarily does not mean prohibition or total destruction. But as early as 1807 the extension of the definition seems to have been begun.

The general prohibition of commerce, if a valid exercise of the power of regulation, becomes important because of the lesser powers the greater one contains. For, if destruction and annihilation of commerce are warranted, it necessarily follows that any condition attached to the use of interstate transportation would be warranted. If Congress may deny the privileges of interstate commerce to all commodities, it may name any conditions under which those commodities may use the privilege. This power of general prohibition was asserted for the government in the argument of Assistant Attorney-General James M. Beck in the Lottery Cases.[2] But the court upheld the statute without affirming this greater power. But in looking to

[1] 9 Wheaton 1, 190.

[2] Champion *v.* Ames, 188 U. S. 321, 341.

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the Embargo Laws as precedents, two objections will be urged: First, that they were enacted under the power to regulate foreign commerce, and this power is different from the power to regulate interstate commerce; and second, that the due-process clause of the Constitution would invalidate embargoes on interstate commerce.

The language in the Constitution delegating to Congress the powers to regulate foreign and interstate commerce is the same. The two subject-matters to be regulated are coupled in the same clause, the objects of a common predicate. In a long line of decisions culminating in the Lottery Case, the Supreme Court declared the two powers to be the same.[1] In a later case[2] the court intimates there may be a difference, and this view is quoted with approval in Weber *v.* Freed.[3] The difference, if it exists, has never been analyzed or defined.

It is submitted that there is no difference between the two powers of regulation. When the power is exercised over foreign commerce, it is frequently mingled with other powers—the power to levy imposts, the treaty-making power, a power inherent in sovereignty, as for example, the power to exclude aliens.[4] If the power to regulate foreign commerce is considered separately, it seems impossible to define it differently from the power to regulate interstate commerce.

No person may be deprived of his life, liberty, or property without due process of law, and private property may not be taken for public use without just compensation. This constitutional limitation has been advanced against almost every regulation of interstate commerce Congress has enacted. The due-process clause is a limitation upon direct taking of private property. It is not a limitation upon any congressional power

[1] Brown *v.* Houston, 114 U. S. 622, 630; Bowman *v.* Chicago Ry. Co., 125 U. S. 465, 482; Crutcher *v.* Kentucky, 141 U. S. 47, 58; Pittsburgh Coal Co. *v.* Bates, 156 U. S. 577, 587.

[2] Buttfield *v.* Stranahan, 192 U. S. 470.

[3] 239 U. S. 325.

[4] This power to exclude aliens was by the earlier decisions based on the commerce clause. But the later and sounder view places it as a power inherent to sovereignty. Turner *v.* Williams, 194 U. S. 279; Fong Yue Ting *v.* United States. 149 U. S. 698.

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whose exercise indirectly affects property rights. This is necessarily true, because we can scarcely imagine an exercise of congressional power that will not indirectly affect some property right of some individual. If the due-process clause were not limited in its restrictive effect to a direct taking of property, congressional legislation would be strangled.

Property rights, like all other legal rights, are not absolute. They are all subject to restrictions by the exercise of the lawful powers of government. And when those powers lawfully exercised indirectly restrict or injure property rights, this consequential result does not invalidate the power so exercised.

In Knox *v.* Lee, the Supreme Court said:

> That provision [the due-process clause] has always been understood as referring only to a direct appropriation, and not to consequential injuries resulting from the exercise of lawful power. It has never been supposed to have any bearing upon or to inhibit laws that indirectly work harm and loss to individuals. A new tariff, an embargo, or a war, may inevitably bring upon individuals great losses; may, indeed, render valuable property almost valueless. They may destroy the work of contracts.[1]

This doctrine has been reaffirmed and even strengthened in numerous decisions.[2] In the cases cited, property rights were destroyed, and contractual obligations not only impaired but nullified, yet the court scouted the idea that the due-process clause would invalidate the regulations. It is one of the principles of constitutional law that the Supreme Court has consistently followed with a marked unanimity of opinion.

It is doubtful if there exists a property right to engage in interstate commerce. It has been held squarely that there is no property right to engage in foreign commerce.[3] But if such a right as to interstate commerce exists, must it not be only a

[1] 12 Wall. 457, 551.

[2] Union Bridge Co. *v.* United States, 204 U. S. 364, 400; Louisville & Nashville R. R. *v.* Mottley, 219 U. S. 467, 480; Addystone Pipe & Steel Co. *v.* United States, 175 U. S. 211, 229; Scranton *v.* Wheeler, 179 U. S. 141, 162; Greenleaf Lumber Co. *v.* Garrison, 237 U. S. 251.

[3] Buttfield *v.* Stranahan, 192 U. S. 470, 493.

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right to engage in interstate commerce lawfully regulated? So, if the regulation be lawful, the property right has existed subject to the regulation. And to assail the validity of the regulation by the due-process clause is to argue in a circle.

The validity of the Child-Labor Law depends upon the power of Congress to control interstate commerce to the extent of general prohibition. Under no other theory can the Act be construed a regulation. The assertion of power by Congress to attach any condition it sees fit to the privilege of engaging in interstate commerce is a step further in regulation than the courts have yet sustained. Indeed, in one opinion the possession of such a power is inferentially denied. In Adair *v.* United States,[1] a statute making it a misdemeanor for an interstate carrier to discharge an employee because of his membership in a labor union was held unconstitutional. "Manifestly," said Mr. Justice Harlan,

> any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce?

It is doubtful if this one interpretation will have a great deal of weight with the Supreme Court as it is now constituted. The trend of modern opinion—the trend of that spirit with which men regard the Constitution—is against limitations.

The doctrine that Congress may prescribe any rule or attach any condition to the privilege of interstate commerce is convenient for the present purposes of humanity, but not without its dangers. If Congress may thus indirectly regulate processes of manufacture, it may indirectly regulate conditions under which agricultural pursuits are followed. Would it not follow that Congress could prohibit the transportation of cotton produced in a state whose suffrage laws excluded negroes; or prohibit the transportation in interstate commerce of articles

[1] 208 U. S. 161.

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manufactured in a state whose suffrage laws excluded women; or prohibit the transportation in interstate commerce of products of any state whose marriage and divorce laws did not conform to a certain standard?

Congress would become possessed of a power of indirectly regulating the domestic affairs of a state that would render the remnants of states-rights a nullity. Interstate commerce would be a weapon against which no state government could prevail. The child-labor statute brings sharply into view the old conflict between the two theories of government—centralization and states-rights. It may mark the end of a century of irreconcilable opinions.

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THE FEDERAL CHILD-LABOR LAW

ANOTHER VIEW OF ITS CONSTITUTIONALITY

ANY consideration of the constitutionality of the federal Child-Labor Law[1] may well begin with an admission that Congress cannot directly prohibit the employment of children in a mining or manufacturing industry within a state. However much the Knight case[2] may have been undermined by more recent decisions,[3] its distinction between production and commerce is still effective to prevent direct congressional regulation of manufacturing and production as distinguished from sale and transportation. This admitted lack of power directly to prohibit child labor is not, however, conclusive against congressional regulation affecting the employment of children. Neither the Knight case, nor any other decision of the Supreme Court, has ever held that Congress could not, in the exercise of its power over commerce, affect the conditions under which manufacturing is carried on within a state. Notwithstanding the lack of power to regulate intrastate railroad rates, Congress may affect such rates through a regulation of interstate rates.[4] In like manner, Congress may, and frequently does, indirectly affect conditions of manufacturing. The immunity from congressional action which is sometimes sought for manufacturing would require an amendment to the Federal Constitution declaring that under no circumstances shall an act of Congress affect conditions of production within a state.

In the absence of such a negation of power, Congress may accomplish indirectly what it may not be able to do directly. There is nothing in the manufacture of goods, any more than in the other conditions and relationships involved in personal

[1] Chapter 432, Acts of Congress of 1916.

[2] United States *v.* E. C. Knight Co. (1895) 156 U. S. 1.

[3] Addystone Pipe and Steel Co. *v.* United States (1899) 175 U. S. 211.

[4] Minnesota Rate Cases (1913) 230 U. S. 352, 399; Houston, East and West Texas R. Co. *v.* United States (Shreveport Rate Case) (1914) 234 U. S. 342.

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actions within a state, which excludes the possibility of indirect regulation by Congress. Congress had no power to prohibit the conduct of lotteries, but a congressional prohibition of interstate commerce in lottery tickets was upheld by the Supreme Court and had the effect of practically abolishing lotteries;[1] Congress had no power directly to regulate the quality of food and drugs manufactured or sold within a state, but acts of Congress prohibiting interstate commerce in adulterated or misbranded food or drugs have been upheld by the courts, and have in a large measure prevented the manufacture of impure foods and the sale of misbranded foods;[2] Congress had no power to prohibit the use of poisonous phosphorus in the manufacture of matches, but an act of Congress placing a prohibitive tax on phosphorus matches has had the effect of driving poisonous phosphorus out of the match factories of the country.[3] These and many other instances of prohibitions of interstate commerce and of regulations under the guise of taxation establish beyond all doubt the power of Congress to reach conditions and accomplish results by indirect action, which admittedly it cannot reach and accomplish by direct action.

The constitutionality of a prohibition of interstate commerce depends on the interpretation to be given to the commerce clause and to the Fifth Amendment to the Federal Constitution. The commerce clause determines the jurisdiction over commerce which has been delegated to Congress as distinguished from that which has been reserved to the states. The Fifth Amendment determines the extent to which the federal government in the exercise of its delegated powers is controlled by the right of the individual—not the state—to insist that the federal action shall not deprive him of life, liberty or property without due process.

In determining the respective jurisdictions of the federal

[1] Act of 1895, held constitutional in Champion *v.* Ames (1903) 188 U. S. 321.

[2] Act of June 30, 1906 (34 Stat. 768, Ch. 3915) interpreted and its penalties enforced in Hipolite Egg Co. *v.* United States (1911) 220 U. S. 45, and United States *v.* Lexington Mill and Elevator Co. (1914) 232 U. S, 399; see also Seven Cases *v.* United States (1916) 239 U. S. 510.

[3] Act of April 9, 1912 (37 Stat. 81).

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government and the states over commerce, we are confronted with the necessity of ascertaining, first, what is "commerce among the several states" and, second, what is included within the power "to regulate." Mr. Hull's article contains an interesting description of the extreme limits of interstate as distinguished from intrastate commerce. The cases involving this problem are interesting and might be controlling if Congress had legislated directly to prohibit the employment of children in industries carried on within a state. Then, as in the Adair case,[1] and the Employers' Liability Cases,[2] the question would have been whether the conditions and relationships regulated were included within the field of "commerce among the several states." But Congress did not directly prohibit the employment of children; it simply prohibited the transportation in interstate commerce of specified goods. These goods undoubtedly are articles of commerce. They are by the Act excluded from commerce "among the several states." Can there be any doubt that the carriage of these goods from one state to another is interstate commerce, and, if it is, does it not follow that the only question under the commerce clause, raised by the Child-Labor Law, is the extent of the power to regulate?

Does the power to regulate include the power to prohibit, and, if so, what are the limitations, if any, on the power to prohibit with relation, either to the nature of the persons or goods excluded from interstate commerce, or the purposes actuating such exclusion? The power of Congress to prohibit foreign commerce was recognized early in our history and has been frequently exercised. This recognition of power to prohibit foreign commerce drawn from a delegation of power "to regulate" such commerce is important when considering prohibitions of interstate commerce, because, as the Supreme Court has said, "the grant is conceived under the same terms and the two powers are undoubtedly of the same class and character and equally extensive."[3] The Supreme Court has also said:

[1] Adair *v.* United States (1907) 208 U. S. 161.

[2] 207 U. S. 463.

[3] Bowman *v.* Chicago and Northwestern Ry. (1888) 125 U. S. 465, 482.

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"It has frequently been laid down by this court, that the power of Congress over interstate commerce is as absolute as it is over foreign commerce."[1] If this is true, it follows that these authorized congressional prohibitions of foreign commerce are precedents in support of congressional prohibitions of interstate commerce. This is not to say that in the exercise of its power to prohibit interstate commerce Congress may exercise the same arbitrary power of prohibition which has been sustained in the field of foreign commerce. Congress may exercise an arbitrary power of prohibition of foreign commerce, because it has been held that the individual has no right to engage in foreign commerce which will be protected under the Fifth Amendment. The individual has, however, a right to seek an interstate market, and this right Congress cannot take from him, except by due process.[2] To hold, therefore, that prohibitions of foreign commerce are precedents in support of prohibitions of interstate commerce, does not mean that Congress may prohibit as freely *in the field of interstate commerce as in the field of foreign* commerce. The reason for the difference, however, is found, not in the commerce clause defining the federal power over commerce, but in the Fifth Amendment limiting the power of Congress to affect the private rights of the individual.

The power of Congress to prohibit interstate commerce, while supported by the precedents establishing the right to prohibit foreign commerce, is not dependent upon them. The Supreme Court has sanctioned congressional prohibitions of the shipment or transportation in interstate commerce of lottery tickets, obscene literature and adulterated or misbranded food or drugs. It has held constitutional the Mann Act, prohibiting the transportation of women in interstate commerce for immoral purposes;[3] and it has upheld the equivalent of prohibition of interstate transportation of intoxicating liquors.[4] We must,

[1] Crutcher *v.* Kentucky (1891) 141 U. S. 47, 57.

[2] See note 1, p. 539, *infra*.

[3] Act of Congress, June 25, 1910, held constitutional in Hoke *v.* United States (1913) 227 U. S. 308.

[4] The Wilson Act, held constitutional in In re Rahrer (1891) 140 U. S. 545, and the Webb-Kenyon Act, interpreted in Adams Express Co. *v.* Kentucky (1914) 238 U. S. 190.

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therefore, take it as established, that the power to "regulate commerce among the states" includes, under some circumstances at least, the power to prohibit such commerce.

What are the circumstances under which interstate commerce may be prohibited? This power might have been confined to the advancement of interstate commerce or the protection of its instrumentalities. The Supreme Court might have ruled that prohibitions of interstate commerce would be sustained only when they exclude dynamite, diseased cattle or other things or persons dangerous or detrimental to interstate commerce or its instrumentalities. The Supreme Court, however, has not seen fit thus to limit the power of Congress to prohibit commerce. It has sustained many prohibitions enacted, not for the protection or advancement of commerce, but solely in the interest of promoting the public health or welfare. It was this authorization of the use of congressional prohibitions of interstate commerce in specified persons or things in the interest of the betterment of conditions in the community which made possible such legislation as the Child-Labor Act.

As early as 1808 it was said: "The power to regulate commerce is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advancement, but in our national system as in all modern sovereignties it is also to be considered as an instrument for other purposes of general policy and interest."[1] While this remark was made in a case involving foreign commerce, recent cases have demonstrated that it is equally true in the field of interstate commerce that the power of Congress may be used "as an instrument for the purposes of general policy." In the Lottery Case the court said:

> If a state when considering legislation for the suppression of lotteries within its own limits may properly take into view the evils that inhere in the raising of money in that mode, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by the carrying of lottery tickets from one state to another?[2]

[1] United States *v.* Williams (1808) 18 Fed. Cases 614.

[2] Champion *v.* Ames, *supra*, p. 532, n. 1.

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Lottery tickets were harmless articles of commerce; there was nothing dangerous or immoral in transporting them from one state to another. They were innocent articles, the only harm in which consisted in the fact that they were the instrumentalities of a gambling transaction. Congress prohibited their transportation, not with a view to protecting or advancing commerce, but solely for the purpose of sustaining established standards of public morality and ideals of public welfare against the insidious effects of public gambling. The purpose of this prohibition was recognized by the court and it was sustained as a proper regulation of commerce. The principle underlying this case has been reaffirmed and applied to sustain an equally important prohibition of interstate commerce—the Mann White-Slave Act—where the congressional purpose was to prevent the use of the instrumentalities of interstate commerce to further practices contrary to public morals.[1]

Since the Supreme Court has gone thus far in supporting congressional prohibition of interstate commerce in the interest of public morality and public welfare, on what ground can the Child-Labor Act be distinguished and annulled? The principal ground of distinction between the lottery and like cases, and the child-labor case, which has thus far been advanced, is that there is a difference between congressional prohibitions of commerce to protect the consumer and congressional prohibitions to protect the producer. It is said that while Congress may look forward to protect the consumer against articles transported to him through interstate commerce, Congress may not look backward to protect the producer of articles which are later to be sold and transported in interstate commerce. In the latter case it is urged that the evil aimed at has been completed in the production of the goods which are offered for transportation, and no additional evil may be expected to flow from their transportation to another state.

This attempted distinction between protection of the consumer and protection of the producer finds no support either in the opinions of the Supreme Court or in the acts of Con-

[1] Hoke *v.* United States, *supra*, p. 534, n. 2.

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gress. The Lacey Act[1] prohibiting interstate shipment of game killed contrary to state laws had for its obvious purpose, not the protection of the consumer, but the protection of the people or the hunters of the state of origin. The principal purpose of the White-Slave Act was to protect women and girls against that enslavement which might follow their interstate transportation. Interstate transportation facilitated the accomplishment of the criminal purpose and thereby contributed to the possibility of serious wrong to persons in the jurisdiction from which the interstate journey took place. Under both of these acts, therefore, it is not the community to which, but the community from which, the transportation occurred that received the most direct benefit from the legislation. Indeed, this attempted distinction between protection of consumer and protection of producer was evolved by the critics of the lottery case who sought vainly for some bar which would prevent further extensions of the federal power. Its proponents are standing on their political ideas of what ought to be in the Constitution rather than on what the Supreme Court has said is there.

The fact is, these prohibitions of interstate commerce have been sustained, not because they protect the consumer or the producer, or the community at the beginning or at the end of an interstate journey; they were sustained by the Supreme Court as regulations of interstate commerce in the interest of protecting and advancing the public morals and the public welfare by suppressing gambling and the white-slave traffic. It was not the welfare of the consumer which justified the lottery prohibition; it was the welfare of the nation. It was not the welfare of any individual which justified the Mann Act, it was again the welfare of the nation. If the national welfare is the real underlying justification for the indirect use of the commerce power in these cases, what is there in the fact that in the one case the public welfare is affected by what happens at the end of an interstate journey and in the other by what precedes that journey, which would justify holding the one a reasonable exercise of the commerce power for the protection of the public

[1] 242 of the Criminal Code of the United States.

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morals and the public welfare and the other an unreasonable interference with the reserved powers of the state?

Mr. Hull makes an interesting suggestion when he says that the power of Congress to regulate commerce in the interest of public health, safety, morals or welfare—i. e., the so-called police power of Congress—is limited to "a matter or thing menacing, threatening, harming or injuring the morals, health or welfare of that sovereignty's [Congress] subject." "Therefore," he says, "to uphold the Child-Labor Law under the theory of the police power it must be clear that interstate commerce (the domain over which Congress has a sovereignty) is menaced." He points out that the "menace to health and morals" involved in child labor has a "locality," namely, the place in which the child is employed. He admits that a prohibition of interstate commerce would constitute a "deterrent" to this "menace"; but he says that by such prohibition "the police power becomes operative outside of the domain of interstate commerce; and beyond the borders of that domain the police power of Congress, like the king's writ beyond his kingdom, does not run."

This is a limitation of the power of Congress to regulate commerce in the interest of public welfare—the police power—which is directly contrary to the decisions in the lottery and the white-slave cases. There the menace to health and morals was the conduct of a gambling business and improper practices through interstate commerce. The lottery proprietor sought his market through interstate commerce, and Congress took that market away from him in order that he might find his business unprofitable and discontinue it. Congress, in effect, abolished the lottery business; and to that extent its exercise of the police power became "operative outside of the domain of interstate commerce." Child labor is a menace to health and morals and it has more and more become a menace which involves matters of national concern. As a nation we are interested in the health and vigor of our future citizenship. Therefore, Congress steps in and says to the employers of children: You may not make use of the instrumentalities of interstate commerce in order to find a market for the goods which you have produced,

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at the expense of the national interest in health and morals. The two cases seem identical from the point of view of the real purpose sought by Congress; and if the police power of Congress, under the commerce clause, is limited to "the domain over which Congress has a sovereignty" and cannot be "operative outside of the domain of interstate commerce," then the Lottery Case must be qualified or overruled.

It is not true, however, that an admission of power in Congress to prohibit interstate transportation in any case where such prohibition will protect or advance the public health, safety, morals or welfare, involves an admission of arbitrary power to prohibit any or all interstate commerce.[1] The Fifth Amendment, while primarily adopted in the interest of protecting the personal and property rights of the individual against congressional aggression is, nevertheless, sufficient guarantee against any arbitrary or unreasonable use of the commerce power to affect seriously the jurisdiction of the states. In providing that Congress may not exercise even its admitted powers in such manner as to deprive a person of life, liberty, or property with-

[1] "Like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument and among them is that of the Fifth Amendment." (Mr. Justice Brewer in Monongahela Navigation Co. *v.* United States (1893) 148 U. S. 312, 336.) See also Champion *v.* Ames (1903) 188 U. S. 321, 362, where Mr. Justice Harlan, in answer to the contention that if Congress could exclude lottery tickets from interstate commerce, it could arbitrarily exclude any article, replied: "The power of Congress to regulate commerce among the states, although plenary, cannot be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore, may not be exercised so as to infringe rights secured or protected by that instrument. . . . The possible abuse of a power is not an argument against its existence." In Adair *v.* United States (1908) 208 U. S. 161, 172, Mr. Justice Harlan said in considering an Act of Congress making it a criminal offence against the United States for an agent or officer of an interstate carrier to discharge an employee because of his membership in a labor organization: "The first inquiry is whether the . . . 10th section of the Act . . . is repugnant to the Fifth Amendment of the Constitution, declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment." This interpretation of the due-process clause of the Fifth Amendment was the basis for a similar interpretation of the due-process clause of the Fourteenth Amendment in Coppage *v.* Kansas (1915) 236 U. S. 1, 10–11.

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out due process of law, the Fifth Amendment has effectively prevented arbitrary or unreasonable prohibitions of the right to ship or transport goods from one state to another. Such prohibitions, under the provisions of this amendment, will be valid only when they are reasonable regulations of private rights bearing a substantial relation to the betterment of evil conditions existing in the nation. They will be upheld only where experience has demonstrated the existence of a menace to the public welfare and has developed a public opinion favorable to its legislative control. No serious disturbance of the relation between the federal government and the states may be expected from the exercise of a power thus limited in the interest of the individual. Economy of governmental effort and substantial improvement in the public health and welfare may, however, be expected to follow congressional insistence, even though it be by indirection, upon maintenance in all of the states of standards which have been accepted and enforced in most of the states.

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THE TRAINMEN'S EIGHT-HOUR DAY

THE American people have recently witnessed what, in some respects, has been the most forceful demonstration of the strength of organized labor in the history of the United States. Four unions, representing approximately 325,000 trainmen,[1] with power to paralyze the nation's transportation facilities, petitioned their employers for an eight-hour day for part of their number,[2] and when the request was refused, these organizations, by an overwhelming vote, decided to strike rather than relinquish their position. Private agencies, the Federal Board of Mediation and Conciliation, and the President of the United States, all failed to bring about an amicable settlement. Only when Congress in the closing hours of its session hastily passed an act granting the wishes of the men was the impending catastrophe averted—a piece of legislation which has been variously characterized as "turning an emergency to constructive purposes,"[3] and as "the most disgraceful scene ever enacted in the history of America."[4] This article and one which is to follow are intended to be accounts of the crisis as it is recorded in the authorized statements and printed matter of the railroads and brotherhoods, as well as in the stenographic reports of conferences held between the railway managers and union leaders. The present paper deals specifically with the following: such information concerning the origin and development of the brotherhoods as seems germane to an understanding of their purposes and methods of procedure; the

[1] The total membership of the four organizations in round numbers is: conductors, 50,000; engineers, 75,000; firemen, 80,000; trainmen, 120,000.

[2] There is a popular notion that the demand of the unions for an eight-hour day embraced all branches of road, yard and hostling service. There was no request on behalf of passenger crews. The fact that the passenger men later voted to strike to enforce the demand in other lines is merely indicative of the remarkable degree of solidarity existing among train-service employees.

[3] *New Republic*, Sept. 2, 1916, p. 100.

[4] *Railway Age Gazette*, Sept. 8, 1916, p. 393.

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progress which they have made in increasing pay, reducing hours, and standardizing conditions of railway work, culminating in the demand for an eight-hour day in freight service; the arguments for and against the measure as set forth by the publicity bureaus of each side; and, finally, an analysis of the stenographic records of the conference held in June between representatives of the railroads and of the men. At this time the demand for the eight-hour day was formally read into the records and discussed, and the "contingent proposition" of the railroads set forth, ending with the rejection by the employers of the demands of the union, and the taking of a strike vote by the employees. In a subsequent paper, the movement will be traced from this point until settled, at least temporarily, by congressional action in the passage of the Adamson Bill.

I. *The beginning of the struggle*

The first organizations among American trainmen were formed during the Civil War as a result of prevailing conditions of railway labor. Wages were low and unregulated, scarcely any two roads maintaining similar rates for like tasks. Methods of remuneration varied greatly, and promotion and demotion were governed largely by favoritism. A standard work-day was unknown. The men who took a train out were supposed to bring it back whether the trip consumed ten or twenty hours. There was no pay for overtime or for work done in excess of a given amount.

To establish uniformity amid these chaotic conditions, the employees formed their unions.[1] At first they attempted to improve the situation by emphasizing merely fraternal, temperance, and insurance features, but as the business of railroading developed, the organizations gradually shifted their ground until today they show typical trade-union characteristics; that

[1] The engineers were first in the field, creating in 1863 the Brotherhood of the Footboard, changing the name later to the Brotherhood of Locomotive Engineers. In 1868 the conductors launched the association now known as the Order of Railway Conductors. The firemen organized five years later; and a decade after that, in 1883, brakemen, flagmen and switchmen united to inaugurate the Brotherhood of Railroad Trainmen. There is also a separate switchmen's union, but it did not take part in the recent movement.

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is, in addition to conducting fraternal and insurance activities, they attempt to regulate wages, hours and conditions of employment for all who engage in train service. Each union has succeeded in securing a majority of those employed in its field, the engineers enrolling ninety per cent, the conductors eighty-five per cent, the firemen ninety per cent, and the trainmen sixty-five per cent, of all persons engaged in these respective branches. Each has extended its jurisdiction over both the United States and Canada. All four orders advocate the open shop, i. e., they do not insist upon the employment of union men exclusively. All maintain extensive systems of insurance for the benefit of members. All have enjoyed a peculiar advantage in securing effective organization, in that their work requires mental alertness, physical endurance, a capacity for responsibility, and an apprenticeship ranging from five to eight years, so that in case of strike the railroads have been unable successfully to utilize strike-breakers taken from other pursuits.

In waging their never-ending stuggle for better conditions, the brotherhoods have evolved certain definite modes of approach, namely: negotiation, mediation, arbitration, strikes, legislation, and federation, all of which were utilized in the eight-hour-day controversy.

Negotiation takes place when representatives of the employees confer directly with road officials to adjust differences, and each year the brotherhoods settle thousands of disputes by this means. If negotiation fails, the next step is often mediation, an attempt by a third party to bring the disputants to agree. In case this is unsuccessful, arbitration may be resorted to. It differs from mediation in that the arbitrators have power to draw up an award binding upon both sides.[1] When all the above means fail, the issue is settled by means of strike or lockout. The union executives cannot order a cessation of work until a two-thirds majority of the men have signed sealed votes declaring for strike.

[1] The Erdman Act of 1898 and the Newlands Act of 1913 provided for boards of mediation and arbitration in case of serious trouble between the railroads and their employees, and in the last few years the more important controversies have been settled by this method.

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The measure known as legislation is an attempt by the unions to secure the passage of favorable bills in state and federal legislatures, and is not necessarily associated with a specific demand of the men, although in the recent controversy congressional action was a direct result of such a demand.

Federation takes place when two or more of the brotherhoods work in concert. Soon after 1900 the unions provided for federations organized upon a territorial basis, and inside of a few years a western territory (including roughly all roads west of Chicago), an eastern territory (comprising the lines east of Chicago and north of the Ohio River), and a southern territory, (containing the remainder of the country) had been formed. The recent eight-hour-day demand in freight service is the first instance of a mass movement by the four unions in all three territories.

A matter of vital importance in understanding the present situation is the three-fold change in the basis of wage payment which took place in train service from approximately 1890 to 1910. As already suggested, in early days few roads used the same methods of remuneration, some paying by the month, others by the day, still others by the trip, and a few by the mile or distance run. But for some time past the tendency has been toward the mileage plan, whereby the train crew is paid for the actual number of miles traversed, and since 1910 a majority of trade agreements have provided that one hundred miles was the distance which should constitute a day's work in freight service.

When this change was first inaugurated there was no regulation stipulating the length of time which might be consumed in running the one hundred miles, train crews being required to make the standard distance, irrespective of the time element. Gradually, the working agreements began to provide that twelve hours should constitute a day's work, that is, the 100 miles which the crew was expected to run must be accomplished within a twelve-hour period. In case the time extended beyond, the crew received overtime pay pro rata. By 1910, schedules generally stated that the one hundred miles must be completed within ten hours.

These two provisions, however, did not regulate all the tasks

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which the men were called upon to perform. Crews were frequently required to do switching, construction work, icing of cars, loading of stock, weighing of cars and handling of freight, either before or during or after the completion of the one hundred miles run or the stipulated hours constituting a standard day. The men objected to performing such duties without extra compensation, and gradually schedules began to provide for paying what is known as "arbitraries"—definite sums for duties performed in addition to the standard day. These payments soon began to form a substantial item in the total monthly wage received by members of the train crew. In other words, by 1910 the workers had succeeded in safeguarding their wage payment from three different angles—the distance run, the number of hours of continuous labor, and work performed in addition to the recognized standard task.

The first request for an eight-hour day with time and one half for overtime in train service was made by the engineers of the western territory in 1907, and it was followed within less than a month by similar petitions on the part of the conductors and trainmen. The engineers, however, upon being offered a flat increase in salary, abandoned their insistence on an eight-hour day, and the movement collapsed. But with the increase of wages secured from 1910 to 1914, the feeling rapidly gained headway among the men that in the future the brotherhoods should place emphasis upon reducing hours of service, provided such a change could be accomplished without jeopardizing the wage schedule already in force. It is an open secret that two years ago the conductors and trainmen wished to ask for an eight-hour day and were held in check only by the fact that the engineers and firemen were unable to coöperate because their own energies were fully taxed in bringing wages in the eastern, western and southern territories up to certain standards. As soon as that was accomplished, the field was open for a renewal of the eight-hour movement.

The recent demand was formulated in a meeting of representatives of the conductors and trainmen for the southern territory, who gathered at Washington, D. C. in July, 1915, and adopted a resolution requesting the presidents of their brotherhoods to

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take up with the executives of the engineers and firemen the question of concerted action for the purpose of securing an eight-hour day with time and one half for overtime in all road (except passenger), yard, and hostling[1] service. Similar resolutions were quickly adopted in all three territories, and in December, 1915, pursuant to such requests, officials of the four brotherhoods met in Chicago to prepare the overture. On January 10th the proposal thus drawn up was submitted to all employees engaged in train, yard or hostling work, irrespective of union membership.[2] Nearly ninety-five per cent of the employees voted in favor of submitting the demands to the railroad managers.

Negotiations were commenced simultaneously on all roads on March 30th, the chairman of each general grievance committee (for the men) presenting a copy of the demand to the managing officials. This was accompanied by a letter suggesting that the railway managers enter into a collective movement for the purpose of handling the proposition, adding that the men stood ready to organize a similar national committee, and requesting an answer in writing on or before April 29th. The communication further stated that the men wished it understood that all rates, rules and conditions of service which were not specially affected by the eight-hour provision should remain unchanged, subject only to modification by proper representatives of both sides.

Every railroad sent an unfavorable reply, but accompanied it with what was called a contingent proposition; that is, the roads submitted a number of matters which they insisted should also come up for consideration in case the subject was further discussed. This list was in no sense a counter proposal to the men's demand, but was merely contingent upon such change in the prevailing method of wage payment as might be brought about by the adoption of an eight-hour day. The refusal of the roads having been received, representatives of the unions

[1] Persons engaged in hostling service care for the engines when they have been brought into the roundhouse after a "run." They were represented by the firemen's brotherhood.

[2] See Special Form No. 35 issued by the brotherhood executives, Jan. 10, 1916.

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met in Chicago, April 24th, and again opened negotiations with their employers, arranging for a general conference between the two sides to convene in New York city on June 1st.

II. *The battle of the publicity bureaus*

The importance of capturing public opinion was felt by both managers and men, and early in the year extensive publicity bureaus were organized and were soon flooding the country with propaganda of various kinds. Newspapers were supplied with daily copy gratuitously. Individual citizens found their mail filling with pamphlets bearing on the subject. Probably never before in a single contest between labor and capital was so great an effort made by both sides to enlist public sympathy. The arguments pro and contra would fill volumes; hence nothing more is attempted here than to give typical examples.

First, the managers and men took opposite views as to whether the proposal was primarily a request for higher wages, or for better working conditions. The employees insisted they were simply endeavoring to secure reasonable hours; and that the punitive overtime clause was inserted to stamp out the practice of working crews beyond the stipulated work-day.[1] The managers declared that the proposition of the men was simply a scheme to increase wages,[2] and that it was obvious that the demand for ten hours' pay for eight hours of service would result in a tremendous advance in wages.[3]

Second, the men argued that they were entitled to ten hours' pay for eight hours' service because of added productivity

[1] Transportation Brotherhoods' Publicity Bureau, Series N P. no. 1, p. 2. The brotherhoods' bureau issued two separate series of statements, one being in printed form for general distribution, and the other to be used as newspaper copy. It is the latter to which reference is here made, and hereafter it will be called "Series N P". The monthly magazines issued by the unions also devoted considerable space to the subject.

[2] *Railway News Bulletin* (issued by the Railroads in eastern territory) vol. i, no. 1, Mar. 20, '16, p. 5. The railways also issued a larger number of pamphlets.

[3] The immediate cost of granting the eight-hour day was placed by the managers at $100,000,000 annually. In case railway employees in other branches should also be given a similar work-day, the total expense would reach $300,000,000 annually. The unions denied that there would be any substantial increase, asserting that the estimates by the managers were mere "figments of the imagination".

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which resulted from the constantly increasing length of freight trains.[1] They claimed that the growth in the amount of freight which the crews transported had been more rapid in recent years than the advances in rates of pay to transportation employees. For example, in 1913 the wage payments required only 19 cents out of each dollar of revenue earned by western roads as compared with 21 cents out of each dollar in 1890. On a basis of freight tonnage, the cost to the roads of locomotive engineers and fireman was 33 cents for each 1000 tons carried in 1913 as compared with 65 cents for each 1000 tons in 1890. Hence, in demanding ten hours' pay for eight hours' service, the men were simply asking to participate in the results of their own increased production.

The railroads, while admitting greater productivity, denied that train crews were alone responsible, pointing out that for every five employees on a train there were twenty-three other workers just as busily engaged in "producing transportation". The managers further affirmed that reducing grades, straightening road-beds, laying heavier rails, building more powerful locomotives etc., were all contributing factors to this larger productivity.[2]

Third, the unions contended that an eight-hour day would lessen hazards of railroading resulting from nervous strain and fatigue.[3] The numbers of fatalities and accidents speak for themselves, a trainman being killed on an average of every four hours and forty minutes, and one crippled every three minutes and thirty seconds. A reduction in the standard work-day, providing proper rest and recuperation periods, would enable the men better to fortify themselves against such conditions.

In replying, the railroads called attention to the fact that there has been a constant decrease in the relative number of fatalities and disabilities in train service; that the railroads are now compelled by law to adopt every reasonable precaution for

[1] Series NP, no. 9, pp. 1–2.

[2] *Railway News Bulletin*, vol. i, no. 3, April 17, 1916, p. 4; vol. i, no. 4, May 8, 1916, p. 4.

[3] Series N P, no. 13, pp. 1–2; no. 14, pp. 1–2.

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preventing such catastrophes; and that there is no reason to believe that a decrease of the standard day from ten to eight hours would materially affect the situation.[1]

Fourth, the brotherhoods asserted that an eight-hour day would benefit the public by compelling the roads to increase the speed of freight trains, that being largely a controllable factor.[2] For instance, all trunk lines centering in large terminals have so-called manifest or fast freight trains which leave these terminals each night, hauling from 1000 to 1200 tons and traveling over divisions from 100 to 240 miles in length in eight to eleven hours. If one train crew can be sent over a division in eight hours, argued the men, there is no reason why crews operating other trains (with the same class of engines) should put in fourteen or sixteen hours in traveling the same course.

The railroads denied emphatically that any of the above benefits would accrue without a substantial increase in rates, stating that the adoption of an eight-hour day would revolutionize methods of operating trains.[3] The long, slow American freight train is one of the chief factors in making low freight rates in this country. Heavy engines, greater carrying capacity of cars and longer trains have all resulted in greater tonnage per train, with a consequent lessening of each unit cost of transportation. If an eight-hour day were adopted, these long trains would have to be cut into two or three sections in order to avoid payment of punitive overtime. Thus there would be a material increase in the cost of operation, which would have to be met by advancing freight rates.

Fifth, in addition to denying the contentions of the men, the railroads put forth reasons why the proposed change should not take place. Train crews, they claimed, were already better paid than the majority of American workmen.[4] Elaborate

[1] *Railway News Bulletin*, vol. i, no. 5, May 29, 1916, p. 5.

[2] Series N P, no. 1, pp. 1–2; no. 5, pp. 1–2.

[3] *Railway News Bulletin*, vol. i, no. 4, May 8, 1916, p. 1; vol. i, no. 5, May 29, 1916, p. 3.

[4] Vol. i, no. 1, March 20, p. 8; vol. i, no. 3, April 17, 1916, p. 8; vol. i, no. 4, May 8, 1916, p. 8; vol. i, no. 5, May 29, 1916, p. 8.

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statistics showing payrolls of each class of employees were sent broadcast. The following computation was freely used to show the increase in average wages over a period of years.

	1900	1909	1914
Average of all train employees	$800	$970	$1240
Increase since 1900, 55 %.			
Increase in five years, 28 %			

The brotherhoods denied that such averages were a fair basis for comparison, because these included overtime, arbitraries, and other forms of extra remuneration.[1] The requirement for a standard day's work in train service is to haul so many passengers or so many tons of freight 100 miles. Computed on a basis of a ten-hour day, wages paid to trainmen are less in proportion than those paid to other labor, as was shown by the following table:

	RATES PER HOUR
Locomotive engineers	$.485
Bricklayers, plasterers, etc.	.75
Locomotive firemen	.31
Carpenters, painters, etc	.70
Freight conductors	.40
Laborers in tunnels, wells, etc.	.575
Freight brakemen	.267
Excavating laborers	.40

Sixth, the managers stated that the increased cost of operation due to the eight-hour day would have to be met in one of three ways, and that the adoption of any of these would be a serious blow to the prosperity of the roads. These methods were:[2] first, pay the increased wages under present working conditions; second, reconstruct the roads with shorter divisions, thus shortening the time of freight runs: third, reduce the length of trains so that they could be run at higher speeds to escape the penalty of overtime. The operators estimated that to do the first of these would cost $100,000,000 annually; to do the second would be impractical; while to adopt the third would force many solvent roads into bankruptcy.

[1] Series N P, no. 13, pp. 1–2; no. 16, pp. 1–2.

[2] *Railway News Bulletin*, vol. i, no. 1, March 20, 1916, p. 5.

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To this argument the unions rejoined that in a majority of cases there would be very little additional expense. As evidence of the practicality of the eight-hour day under present methods of operation they submitted statements showing that on ten leading western railways freight service was already on such a basis, and that none of these roads were in the hands of receivers.[1]

Seventh, the managers claimed that the suggested change in the basis of payment should not be made without first consulting the 700,000 stockholders who were the real owners of the American railways, since the increased cost in operating railways would result in decreased dividends.[2]

The unions retorted that in dealing with the operators they were in fact negotiating with the chief owners of railway stock.[3] They pointed out that the 622,284 stockholders reported by the Interstate Commerce Commission in 1914 included thousands of duplications, the holdings of the Pennsylvania Railroad Company being an illustration. This company on June 30, 1913, was reported to be a stockholder in at least 72 other transportation companies. Of these 72 companies, as many as 15 were in turn holders in 174 other railway companies; 23 of these 174 held stock in 54 other companies; three of the 54 were owners in 15 other companies; and three of these were holders in 7 other companies. This complex scheme, argued the brotherhoods, is typical of the intercorporate holdings throughout the country, a few railroad operators being controlling owners of a majority of American railway stock.

III. *What took place at the June conference*

The conference between the railroads and the men began in New York on June 1st.[4] About twenty-five leading railroad

[1] Series N P, no. 5, p. 2.

[2] *Railway News Bulletin*, vol. i, no. 1, March 20, 1916, p. 5.

[3] Series N P, no. 2, pp. 1–4.

[4] Minutes of meetings held between the National Conference Committee of the Railways and the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen, held at the Engineering Societies Building, New York, June 1 to 15, 1916. Hereafter referred to as June Conference.

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managers, from every important system in the United States, were present, and while the brotherhoods were technically represented by the general chairmen of their grievance committees, (some 640 in all) the actual conference work was conducted for them by their union executives, with President A. B. Garretson of the Order of Railway Conductors acting as chief spokesman. Mr. Elisha Lee, of the Managers' Committee, was chairman of the conference.

The first business was to ascertain what railroads were represented. This was necessary because the men insisted upon drawing up a uniform trade agreement (so far as the eight-hour question was concerned) for every railroad employing men in train, yard, and hostling service.[1] As soon as this matter was arranged, President Garretson asked permission to read into the records and interpret the official request for an eight-hour day. The proposition was identical with the one submitted to each road on March 30th. It comprised four articles which were substantially as follows:[2]

Article 1 stipulated that in all road service, except passenger, 100 miles or less, 8 hours or less, should constitute a day's work; mileage in excess of 100 miles but run within the 8-hour period should be computed pro rata; all overtime in excess of eight hours to be calculated by the minute and paid at one and one-half times the regular rate. No employee was to receive less for eight hours or for 100 miles than was formerly received for a minimum day or for 100 miles. In other words, article 1 sought to give to members of train crews other than passenger an eight-hour day, with the same rate of pay formerly received for ten hours, except that whereas overtime in excess of ten hours had formerly been computed pro rata, overtime in excess of eight hours was now to be paid at one and one-half times the regular rate.

Article 2 applied to yard service in its entirety the same general conditions which article 1 applied to road service.

[1] June Conference, p. 59.

[2] *Ibid.*, pp. 59–60. The proceedings consisted of direct testimony and cross examination. Many topics were frequently recurred to. Consequently it has not been possible for the writer to give each subject in its chronological setting.

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Article 3 secured similar conditions for hostling service.

Article 4 was a saving clause, preserving to the men any rates or rules in prevailing schedules that were preferable to provisions in the suggested one.[1]

In explanation of the proposal, President Garretson took the position that the men were seeking an eight-hour work-day rather than an advance in wages. He said there was no valid reason why such a day could not be established in its purity in yard and hostling service and be approximated in road service. The provision of time and one-half for overtime was inserted for the express purpose of forcing the railroads to observe an eight-hour standard.

The saving clause (article 4) was intended to protect rights which the men had secured in previous settlements, the "eternal" attitude of the brotherhoods being to secure the greatest possible benefits for all persons engaged in train service.[2]

In order to be certain how the unions would construe the eight-hour proposal, the managers submitted a series of actual and hypothetical cases, asking the leaders to interpret them just as though the proposal were in force. The following is a typical example:

> Assume a branch run of 85 miles, which trains run in 9 hours; under your proposal the conductor in the eastern district will be paid $4.00 for the run plus one hour overtime at 75 cents, or a total of $4.75.[3]

The greater part of three days was consumed in discussion of this character. Having satisfied themselves as to the intent of the men, the operators asked permission to expound their reply, which was similar to the refusals sent by the individual roads in April, and read as follows:[4]

[1] The reader should bear in mind that each road maintains its own working agreement, and that provisions in some of these are much more favorable to the men than are those in others.

[2] June Conference, pp. 61–109.

[3] *Ibid.*, pp. 111.

[4] June Conference, pp. 110–111.

The reply of the roads was actually read into the record as soon as the request of the men, with necessary explanations, had been made. This was done in order that

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The railroads have no desire to change either the existing rates of pay or the working rules, nor to reduce the earning possibilities of the employees under their existing rules, but inasmuch as your proposals contemplate fundamental changes in operating methods and practices on which the schedules have been built up, this Committee reiterates that in connection with, and as a part of, the consideration and disposition of your proposals, there shall be opened for consideration and disposition those provisions in the schedules and practices thereunder, governing compensation in the classes of service affected by your proposals or those in conflict with the following principles, as they apply to such classes.

(A) No double compensation for the same time or service.

(B) The same classification for the purpose of compensation to be applied to all members of the train and engine crew.

(C) Two or more differently paid classes of service performed in the same day or trip, to be paid proportionate rates according to class of service, with not less than a minimum pay for the combined service.

In explaining the above statement,[1] Chairman Lee pointed out that in no sense was it a counter proposition, but merely one contingent upon a change of basis in the present method of wage payment, and that where this was not altered, the proposition would not apply. There was no "attempt or desire to take anything away from the men." The tentative suggestion was necessary, however, because there were certain provisions in existing schedules which, while proper under prevailing conditions, might not be fair to the roads if a change of basis were adopted. In present trade agreements, for example, the words pro rata and overtime were used interchangeably. In the eight-hour proposal, they had vastly different meanings.[2]

President Garretson, in replying to the chairman's explanation, called attention to what he said was a lack of consonance between the purpose which the manager stated and the language in which the contingent proposition was couched. The chairman had said the roads had no desire to take anything away

there should be no misunderstanding as to the attitude of the operators. The explanation of the reply did not come until the proposal of the men had been fully considered.

[1] June Conference, pp. 260–262. [2] *Ibid.*

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from the men, yet section A of the roads' reply might easily be construed so as to impair seriously a trainman's monthly earnings.[1]

To learn how the operators proposed to define their contingent suggestion, the union submitted a number of cases, each of which assumed that an eight-hour day was in force, and the roads were asked to make a practical application of their contingent proposition. Instead of taking these up individually, the roads offered what they called a "yardstick,"[2] an interpretation of their contingent proposition so worded as to cover the cases. To make the situation concrete, the employers were requested to apply their yardstick to cases involving an interpretation of section A.

This process had not continued long before it was evident that the managers were expounding the section so as to sweep out of existence all initial and intermediate arbitraries. The men protested that such an interpretation was contrary to the expressed desire of the road not to curtail the earning possibilities of employees, President Stone, for the engineers, stating that the elimination of such arbitrary payments would reduce the monthly wage of certain western engineers and firemen sixty-five and fifty dollars respectively. The loss in other classes of road service was also said to be heavy. The employers replied that the men were not "losing out," for they were being recompensed in other directions, (i. e.[3] the adoption of the eight-hour day), to which President Garretson retorted that the brotherhoods were not asking for compensation in one direction to offset losses sustained in another, but were seeking positive advancement.[4]

[1] June Conference, pp. 262–263.

[2] June Conference, pp. 339–40. The yardstick read as follows: "A road man's time will start from the time he is required to report for duty and except where tied up between terminals; in accordance with existing agreements all work and delay required at initial terminal and en route will be paid as continuous time or mileage. At final destination existing rule or rules concerning additional service after arrival, final terminal delay, etc., not to be disturbed and will be paid for pro rata until the time on duty equals the overtime limit of the run. Time paid for under one rule not to be paid for under another rule or rules."

[3] *Ibid.*, p. 269.

[4] *Ibid.*, pp. 269–270.

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The more the yardstick was applied, the more obvious it became that the sides would never meet on common ground. The roads clearly thought that the demands of the men were unreasonable, and rightly or wrongly, the men soon became firmly convinced that the contingent proposition might easily be interpreted by the operators so as to bring up for reconsideration every benefit which the brotherhoods had won since they signed their first trade-agreement back in the eighties. The union executives declared that their men would never agree to a proposition which contained such possibilities, and on June 14th, after the conference had continued two weeks, the managers were requested to make final reply to the employees' demands.[1]

This answer came the following morning in the form of a joint letter to the executives of brotherhoods. In it the managers stated that nothing had developed in the conference to justify granting the extraordinary demands of the men. They emphasized that they owed a responsibility to three substantial interests—the entire body of their employees, the owners of the railroads, and the public, none of which should be ignored in considering a question of this kind. In closing, they suggested that since no agreement had been reached, the proposition of the men, together with the contingent proposal of the companies, should be submitted to arbitration, preferably before the Interstate Commerce Commission, or else in accordance with the terms of the Newlands Act.

The answer of the unions was made by President Garretson. Referring to the possibility of arbitration before the Interstate Commerce Commission, he pointed out that that body had already prohibited its members from acting as arbiters, because, being a rate-fixing body, it could not assume the responsibility for increases of compensation without also assuming a second duty, namely, to consider the connection between rates and wages, and this it declined to do. Arbitration under the federal act was also undesirable because of the impossibility of procuring neutral arbiters who had sufficient technical information to grasp the intricacies of the question.

[1] June Conference, p. 535.

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You have seen instances where, under the method of arbitration that is proposed, arbitrators of undoubtedly honest intent, men of as high intellectual and moral standing as exist, actuated only by the desire to do the right, found themselves confronted, after they had written it, in what they believed perfectly intelligible language, with a lack of power to apply that language with the meaning that they intended it should convey; counsel, which they employed, told them that it was an impossibility to right what they believed was a wrong they had done.

This situation had created a sentiment among the men strongly unfavorable to arbitration. But least of all would the employees consent to arbitrate a proposition where "their ability to sell time" (i. e. the gains they had already secured) was to be set over against their own proposal for an eight-hour day.[1]

Continuing, the speaker deprecated the fact that the managers had not submitted a definite counter-proposition, one which he could carry back to his men, adding that the tentative proposal of the managers was of such sweeping character in regard to arbitraries, that it did not leave him, or any man in his position, one iota of ground upon which to stand in defense of it.[2] Therefore, the only thing which the executives could do was to let the men vote upon the question of whether they wished to strike in order to enforce their demand.[3]

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[1] June Conference, pp. 541–544.

[2] Referring to the managers' willingness to arbitrate, President Garretson expressed himself as follows to the writer: "There never was a proposition made in good faith to arbitrate. Do not misunderstand this to mean that the companies did not propose arbitration, for they did, but the idea I desire to convey is that with the indefinite nature of the Conference Committee's tentative proposition and the interpretation thereof, they were perfectly aware that nothing but a refusal could take place because there was no definite proposition from the companies. There was only a generality that left the scope of arbitration as wide as the conditions of service are. In other words, it would have left the proposition to be arbitrated in exactly the same condition as if we had no agreements anywhere."

[3] June Conference, pp. 546–547.

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THE CONSTITUTIONAL ASPECTS OF THE "PARSON'S CAUSE"[1]

OF the various important trials and lawsuits during the colonial period few have attracted more attention from the general historian than the cases growing out of the Virginia Two-Penny Act of 1758. Particularly since the appearance of the *Life of Patrick Henry*, by Wirt, Henry's

[1] Bibliography: Sources.

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Briefs of John Camm, plaintiff and appellant, and Hansford and Moss, defendants and respondents, before the Privy Council. A transcript from these briefs (from British Museum Additional Manuscripts, no. 36220, folios 52–64) is in the Library of Congress, Hardwicke Papers, vol. 872, pp. 201–279. References in this article are to the transcript.

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Tyler, Leon G. "The Two Penny Act," in *William and Mary Quarterly*, vol. x, pp. 10–30.

Howard, George E. Preliminaries of the Revolution, pp. 87–101.

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speech in the "Parson's Cause" has been commonly regarded as a prophecy of the Revolution, "the first intimation of the approaching conflict."[1] It is thus linked with James Otis's argument in the Writs of Assistance case, when, as John Adams would have it, American independence was born. A somewhat uncritical acceptance of the enthusiastic estimates of Wirt and Adams later resulted in an exaggerated idea of the importance attached to these speeches at the time. Wirt himself shows clearly that when Henry went to Williamsburg the next year "no one knew anything of him."[2]

A wider study of contemporary material has resulted in a better appreciation of the real legal, constitutional and social issues involved in the whole Two-Penny-Act controversy, a controversy in which Henry's speech in Parson Maury's case was but a single incident, and not the most important one. Eckenrode, for instance, has brought out the connection of this agitation with the whole movement against the established church, culminating in the Revolutionary separation of church and state.[3] L. G. Tyler, in an excellent article in which he comments particularly on the determination of the Virginia Assembly to exercise complete control over local taxation, has shown that the underlying question was "the Virginia Constitution under the British Sovereign."[4] Some important aspects of the case, however, have been generally ignored. Even when the technical points of law involved have been correctly stated,[5] they have not been sufficiently emphasized. The far-reaching constitutional questions involved have thus been obscured, or at best have been stated without further elaboration.[6]

[1] Cooke, Virginia, p. 378. *Cf.* Campbell's Virginia, p. 518: "Henry's speech . . . and the verdict . . . in a certain sense . . . the commencement of the Revolution in Virginia." See also Appleton's Cyclopædia of American Biography article, Henry.

[2] Wirt's Life of Henry (4th ed.), p. 76.

[3] *Report of the Virginia State Library*, 1909–10 (Separation of Church and State. Special Report of Dept. of Archives and History).

[4] *Wm. and Mary Quarterly*, vol. 19, p. 25.

[5] As in Henry's Henry, I, 34.

[6] The best accounts are in Tyler's article, Henry's Henry, and Howard's Preliminaries.

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The outstanding facts in the controversy are too familiar to call for more than a brief restatement. By an Act of Assembly of 1748, confirmed by the King in 1751, the salary of the Virginia clergy was fixed at 16,000 pounds of tobacco a year.[1] By an Act of 1753, however, two counties were ordered to pay £100 in Virginia currency instead.[2] In June 1755 the assembly permitted two counties to pay tobacco levies in money, at a rate to be fixed by the justices of the peace.[3] Later in the same year a threatened shortage in the tobacco crop led to the enactment of a law, to expire at the end of ten months, allowing the payment in money of all tobacco debts at the rate of two pence a pound.[4] Some of the clergy protested vigorously at the time, even appealing to the Bishop of London, but, as it turned out, two pence was not far from the market value, and the matter was not pressed.[5] In 1758, however, another threatened crop-failure led to a popular demand for relief. The assembly responded on October 12th by providing that all debts, public and private, contracted on a tobacco basis, might if the debtor so desired be paid in currency at the rate of two pence a pound. The act was limited in operation to a year.[6] Since the market price of tobacco rose to about six pence, debts were naturally paid for the most part in currency.

The merits or demerits of this act as a piece of legislation are not relevant to the present discussion. It has been extensively denounced; but a very plausible argument can be made out for its justice and expediency as an emergency measure. The important point is that the clergy, rightly or wrongly, felt particularly defrauded; for, while the act was general in terms, they were the greatest proportional losers.[7] As a body they sent Rev. John Camm to lay their grievances before the King in Council. The Bishop of London supported their cause, and on the recommendation of the Lords of Trade, the King on August 10, 1759, disallowed not only the act of 1758 but those

[1] Hening, VI, 88.
[2] Hening, VI, 369.
[3] Hening, VI, 502.
[4] Hening, VI, 568.
[5] Perry, pp. 434, 440, 447.
[6] Hening, VII, 240.
[7] Perry, p. 442.

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of 1753 and 1755 also. The disallowance was not, however, officially published in Virginia until June 27, 1760, eight months after the law of 1758 had expired by limitation.[1]

Meanwhile many of the clergy had refused the tender of currency as the equivalent of their full salaries, and several ministers now proceeded to sue the tax collectors of their parishes to recover the full market value of the tobacco due under the act of 1748. The collectors set up the law of 1758 as their sufficient justification for having refused to pay in tobacco, and the issue was squarely joined. The crucial question was perfectly clear: In May of 1759, when salaries for 1757–8 were due, was the enactment of October 12, 1758 a valid law of Virginia, as the legislature had obviously intended it should be? The litigation dragged on for six or seven years, accompanied by an acrimonious war of pamphlets and public letters in which the issue was threshed-out from every angle. The clergy were uniformly unsuccessful in the courts, and naturally they felt aggrieved.

Following the lead of Wirt,[2] later writers have almost unanimously agreed that the clergy had the law all on their side, and that they were defeated only by an appeal to prejudice. The refusal of judges and juries to decide in their favor has been interpreted as a bold act of defiance on the part of the colonists, foreshadowing Revolution.[3] This view assumes as a matter of course that the disallowance of a law might be, and in this case was, retroactive, thus invalidating all action taken in accordance with that law's provisions.[4] Such an assumption is entirely unwarranted. Ever since the Crown began the prac-

[1] Perry, pp. 458, 460, 464. Carter and Bland, however, say that many of the clergy acquiesced in the law. Carter's Letter, p. 51.

[2] "The clergy had much the best of the argument. The king in his council took up the subject, denounced the act of 1758 as an usurpation, and declared it utterly null and void." Wirt's Henry (4th ed.), p. 40.

[3] Meade, Old Churches, I, 217; Hawks, Ecclesiastical Contributions: Virginia, p. 118; Campbell, pp. 514, 518.

[4] Bancroft (last ed.) III, 65; Cooke, Virginia, p. 381; Morgan, True Patrick Henry, p. 61; Grahame, History of the United States (1845) IV, 96, 98. Campbell admits the repeal was not "retrospective." Channing, United States, III, 8; Howard, Preliminaries, p. 98.

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tice of reviewing colonial legislation, in the later 17th century,[1] it had been absolutely clear that disallowance took effect only from the moment when it was announced officially in the colony. All action taken under a law before the proclamation of disallowance was valid. In other words, a disallowance was the exact equivalent of a repeal, and the two words were used interchangeably.[2] Since the machinery of disallowance was slow moving, an objectionable law might have several years of life before it could be annulled. To prevent this, royal governors were instructed to refuse assent to certain general types of laws unless a clause was inserted suspending their operation until they could be reviewed in England.[3]

Inasmuch as the law of 1758 had expired before Virginia was notified of its disallowance, unbroken precedent seemed to demand that the Virginia judges should regard it as having been in full force and effect in the spring of 1759. Prima facie, the clergy had no case whatever. Nothing daunted, they boldly attempted to differentiate this case from an ordinary disallowance, arguing that the act of 1758, although it had the form of a law, had never been binding at all. The original validity of the Two-Penny Act was questioned on two general grounds. It was pointed out in the first place that the king's instructions to the governor specifically restrained him from assenting to any amendment to existing legislation unless the amending act contained a suspending clause. Since the act of 1758 contained no such clause, it was urged that the governor's commission and instructions

[1] As early as 1638 Virginia laws were being sent to England for examination (Calendar of State Papers, Colonial Series, 1574–1660, pp. 245, 268) but none appears to have been disallowed before the time of James II. In October, 1680, a clause was "excepted" by the king (Calendar State Papers, Colonial Series, 1661–1668, p. 11). In 1687 the assembly denied the king's right of repealing a law by proclamation. Bruce, Institutional History, I, 497. Only after the reorganization of the Board of Trade in 1696 was supervision really systematized.

[2] In 1752 the assembly declared: "As we conceive, according to the ancient constitution and usage of this colony, all laws enacted here . . . not repugnant to the laws and statutes of Great Britain, have always been taken and held to be in full force, until your Majesty's disallowance thereof is notified here." Hening, V, 435, note. Dickerson, American Colonial Government, p. 226.

[3] Greene, E. B., Provincial Governor, p. 163; Provincial America, p. 53.

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did not sufficiently authorize and impower the Governor, with the Consent of the Council and General Assembly to make the said Act . . . but the said Act, as it tended to suspend the Force and Effect of the Act of Assembly . . . [of 1748] . . . which had received his Majesty's Approbation, was contrary to his Majesty's Instructions to his Governor, and was therefore null and void from the making thereof, and so declared by the late King by his Order in Council.[1]

In the second place, the act was said to be "void in itself, being contrary to the principles of justice."[2]

The issue thus brought before the courts was entirely new. Numerous instances had occurred in which royal governors in Virginia and other colonies had assented to laws in direct violation of their instructions. Occasionally such laws had been confirmed by the king, but usually they had been disallowed, particularly when they amended existing laws which had received formal ratification. The king had signified his "high displeasure" to the governors, and had threatened recall in case instructions were not better obeyed.[3] But never before had the question been raised of the validity of such laws up to the time of their disallowance. When laws, as was sometimes the case, were disallowed after they had expired by limitation, it was simply by way of expressing emphatic disapproval, with a view to preventing similar action in the future. There seems to have been no expectation that action already taken under these laws would be invalidated by their disallowance. On the contrary, the fact that such laws were in full force, no matter how clearly the governors had violated instructions in signing them, was regarded as a grave danger.[4] No remedy however seems to have suggested itself except to reiterate threats and

[1] Camm's Brief, p. 214. (Hardwicke Papers, vol. 872, Transcript Lib. of Cong.). *cf.* Campbell, p. 512.

[2] Respondents' Brief, p. 267.

[3] Massachusetts Acts and Resolves, II, 127.

[4] The Board of Trade complain (1754) of the practice "which is become too frequent in Your Majestys Colonys, of passing Laws of a nature not warranted by Your Majestys Instructions, which take immediate effect, and continue in Force till your Majestys Pleasure be signified to the contrary." (Acts of the Privy Council of England, Colonial Series, V, 251).

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orders to the governors, and occasionally through them to the assemblies.[1]

The contention by the clergy that the king's Order in Council had specifically declared the law of 1758 null and void from the first is disingenuous. It assumes the whole point at issue, and the acceptance of the clergy's statement at its face value has been responsible for much later confusion. Camm, indeed, had definitely urged the Privy Council to declare the act "absolutely null and void in [its] creation," having "no force or Authority at the time of making or otherwise."[2] Nothing, he pointed out, would better please the assembly than a disallowance in the usual form, for this would permit them to pass yearly acts, which would expire before their disallowance could be proclaimed, being valid in the meantime.[3] The Privy Council, as well as the Board of Trade,[4] appreciated this, and "their Lordships would have declared the Act void *ab initio*, if they could have found a Precedent for it."[5] Lacking a precedent, disallowance had to be signified in substantially the usual formula, and the governor proclaimed it in Virginia exactly like any other disallowance. The clergy protested vigorously against his use of the word "repeal," which they said had been "studiously" avoided by the Council. It is true that the Order in Council of August 10th read "the said Acts are hereby disallowed, declared void, and of none effect."[6] Comparison with other orders of disallowance, however, shows that while the word repeal was generally used, it was sometimes omitted,[7] without any indication that the omission meant anything. The

[1] Massachusetts Acts and Resolves, II, 127; Md. Archives, XXIV, 133.

[2] Perry, pp. 487, 488. The date of this obviously should be 1759.

[3] Perry, p. 488.

[4] Perry, p. 510.

[5] Perry, p. 510. Camm's Brief, p. 217.

[6] Quoted in Respondents' Brief, p. 268.

[7] "The said Laws are hereby repealed and declared void and of none effect" (1699) Md. Archives, XXV, 82. This is the usual form; *cf.* Colonial Records of North Carolina, XI, 213; Acts and Resolves, Public and Private, of the Province of Massachusetts Bay, II, 125; Acts of the Privy Council of England, Colonial Series, II, 127, 832, 838, 843; *Va. Mag. of Hist.*, vol. 18, p. 372. But compare Colonial Records of North Carolina, VIII, p. 616: "The said Acts are hereby disallowed, declared void and of none effect" (1771).

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fact therefore that its omission in this instance may have been intentional would not serve to distinguish it from an ordinary disallowance.

Of somewhat more significance is Camm's assertion, on the strength of conversations between his lawyer and individual members of the Council,

> that, it was the opinion of the most Honourable the Privy Council that the Act was orginally null in itself by reason of its manifest injustice, setting aside all disputes about authority, that it could not be deemed a law by any court of judicature whatever, and that if it had been then before them in a proper course of law they should have adjudged it to be no law.[1]

It is obvious, however, that this informal and third-hand announcement of the private views of certain members of the Privy Council could not be accepted as legally binding on the Virginia courts. Essentially, then, the clergy were demanding that the local judges should assume the responsibility for refusing to take cognizance of a seemingly valid act of the legislature. The law was to be regarded as void from its inception primarily because it was beyond the competence of the assembly to pass it, and of the governor to sign it. The argument that it was void because contrary to natural justice was secondary.[2]

In defense of the law it was urged that "by the well known and long established Constitution of the Colony of *Virginia*, and more especially by virtue of the. . . Commission of the Governor," the governor and assembly together were fully authorized to pass any law not repugnant to the laws of England.[3] The clergy's appeal to the courts was based upon a denial of this contention. In modern phraseology, then, the courts were asked to declare the act of 1758 unconstitutional, as violating a higher law. In the face of such an unprecedented issue, courts

[1] Camm's Brief, p. 217; Perry, pp. 490, 510, 516.

[2] In the argument before the General Court it was waived. Respondents' Brief, p. 268.

[3] Respondents' Brief, p. 253.

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and juries hesitated and disagreed. In no instance did a clergyman recover the balance of salary for which he was suing; but the five recorded suits, with their various appeals, show striking differences.

The first case to come to actual trial was that of the Reverend Alexander White, before the King William County Court, in August, 1762. At the request of the Parish Collectors, Governor Fauquier sent the original copy of the disallowance order of August, 1759, together with former disallowances for purposes of comparison. It was a matter of common knowledge that the Governor regarded the order respecting the Two-Penny Act as an ordinary dissallowance. "The court took the hint," and instructed the jury that in their opinion the Act of 1758 had been valid, since word of its repeal had come only after it had expired. The court left the final decision of this question of law to the jury. Counsel for White urged the distinction between the repeal of a law under which no action had in fact been taken, and the disallowance of an act which had already had its full effect. The omission of the word "repeal" in the Council's order was emphasized; and the inherent injustice of the measure was pointed out, but all to no effect. The jury found for the Parish Collectors, and White could only appeal to the General Court.[1]

The Reverend Thomas Warrington had brought suit even before White, but the case came up before the York County Court somewhat later. This time, the jury awarded substantial damages against the Collectors. The justices, however, held that the law of 1758 had been valid, and refused to allow the judgment to be entered up. Warrington also appealed to the General Court.[2]

A third suit was that started April 1, 1762, by the Reverend James Maury, in the Hanover County Court. Counsel for the Collectors set up the act of 1758 in bar. The plaintiff demurred, insisting that this law had never been binding,

[1] Authority for this trial is the letter in Perry, pp. 479–82.

[2] Perry, p. 496; Henry's Henry, I, 34. Campbell, p. 514, says the suit was in Elizabeth City County.

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and on November 5, 1763, the court sustained the demurrer. This was the first and only time that the Two-Penny Act was judicially declared invalid, because outside the competence of the legislature. It was before a special jury at the December court, called to fix the amount of the damages, that Patrick Henry made his incendiary speech, and secured a verdict of one penny against his clients. It is quite true, as is frequently pointed out, that technically Henry had no business to argue the law in the case. The court had ruled on the law, and the only question before the jury was the amount due Mr. Maury. The further conclusion that Henry had no law on his side is an entirely different matter. While his attack on the established clergy was entirely gratuitous and irrelevant, his argument that "the act of 1758 had every characteristic of a good law" was perfectly sound. As to his contention that "a King by disallowing Acts of this salutary nature, from being the father of his people degenerated into a Tyrant, and forfeits all right to his subjects' obedience," it seems probable that the reference was not to ordinary disallowances at all. The real issue was the alleged right of the king to declare a law void from its inception, a right hitherto never heard of in Virginia. However inflammatory Henry's language may have been, the position which he was defending was essentially the conservative one. Again the disappointed parson could only appeal.[1]

In 1764, the Reverend Patrick Henry, the orator's uncle, started suit in Hanover County. This continued until the General Court had passed on the fundamental issues involved, and was then dismissed.[2]

In all the litigation, however, the crucial case was the one instituted in behalf of the Reverend John Camm. Since his parish was in Williamsburg, suit was brought originally in the General Court, October 10, 1759. The court, it would seem deliberately,[3] delayed a decision, and the proceedings dragged

[1] On Maury's Case: Fontaine, (ed. A. Maury) Memoirs of a Huguenot Family, p. 419, gives Maury's letter to Camm. Wirt's Henry is based on testimony of persons present, but given years later. Henry's Henry uses all material available. Robinson's letter in Perry, p. 497 ff., is based on Maury's letter to Camm.

[2] Henry's Henry, I, 45.

[3] Perry, p. 475.

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along until April 10, 1764, when by a vote of five to four the Act of 1758 was upheld, and judgment was given against Camm. Two members of the court refused to vote, on the ground that they were Camm's parishioners.[1] The Governor, who needed to vote only in case of a tie, publicly expressed his approval of the decision.[2]

Camm appealed to the Privy Council. In this of course he was fighting the cause of all the ministers. The assembly, in turn, realizing the extent to which their legislative independence would be curtailed by an adverse decision, undertook the expense of defending the Collectors.[3] The case was referred to a Committee of the Privy Council, and there argued at length. In accordance with the Committee report, the Council dismissed Camm's appeal. The decision was not at all on the merits of the case, but on the technical ground that the original suit should have been brought as an action of debt instead of trespass upon the case. It was generally understood that this was a mere pretext for evading the issue. Presumably it was regarded as highly inexpedient to risk offending colonial opinion, already dangerously excited over the Stamp Act controversy.[4]

The General Court of Virginia calmly accepted this technical victory as a complete vindication of their position, and dismissed the pending appeals of White, Warrington and Maury.[5] Naturally enough, the clergy were bitterly disappointed, and talked

[1] The two Mr. Nelsons. One at least was thought to favor the clergy's position. (Perry, pp. 495, 514). Probably they were glad to escape the responsibility of voting. Meade, Old Churches, I, 218, thinks both favored the clergy. On the case before the General Court see, further, Camm's Brief and Respondents' Brief; Campbell, p. 512; Perry, pp. 495, 496.

[2] Perry, pp. 495, 513.

[3] Perry, p. 475.

[4] From the Acts Privy Council, Colonial, IV, 699. The date would seem to be 1765; the Briefs as printed were for 1765, but one is altered to 1766; from letters in Perry, pp. 520, 524 the date of final action by the Council appears to have been 1767. On Privy Council's action, see Perry, pp. 525–30; and mss. endorsement on Respondents' Brief: "Judgment affirmed for the Respondents (the action being misconceived) . . . No determination, as to the *disallowance* of the Act of Assembly 1758, w[hethe]r it avoided the *act* ab initio, nor whether it was void in Law as being against natural Justice."

[5] Perry, pp. 527, 530.

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for several years of renewing the contest in the courts, but nothing definite was done, and the whole matter was lost sight of in the excitement of new issues.[1]

On the basis of the arguments in these different suits, supplemented by contemporary letters and pamphlets, it is possible to summarize the opposing views as to the validity of the Two-Penny Act, as follows.

Against the original validity of the Act it was urged: (a) that the legislature of Virginia, owing its very existence to the royal prerogative, was not an independent but a subordinate body. It had only such powers as the king chose specifically to confer, and it was strictly subject to such limitations as he saw fit to impose.[2] Certain of these limitations were expressed in the governor's commission, in the clause which authorized him to pass certain laws with the consent of the assembly. Thus, laws should not be repugnant to those of England, and they must be submitted promptly to the king for approval or disallowance.[3] But the governor's commission also referred him to his instructions, "and consequently such instructions are, by such reference, incorporated with and made Part of the Commission." [4]

(b) The sixteenth article of the governor's instructions forbade him to sign any "Act for repealing any other passed within the Colony whether the same had or had not received the Royal Approbation, unless a Clause was inserted . . . suspending . . . the Execution thereof until his Majesty's Pleasure should be known." [5]

(c) The assembly had long known of this restriction, and had recognized that it was binding on them as well as on the governor; for in 1752 they had formally and specifically admitted that a law once confirmed "cannot by the legislature here be revised, altered, or amended" without a suspending clause.[6] They therefore had petitioned for a modification of

[1] Perry, pp. 524, 530.

[2] Perry, p. 515.

[3] Camm's Brief, pp. 211–212.

[4] *Ibid.*, p. 220; Perry, p. 512.

[5] Quoted in Camm's Brief, pp. 217–218.

[6] Hening, V, 435, note; Camm's Brief, p. 222.

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this very instruction, so as to allow them to pass emergency amendments;[1] but the King in Council, March 7, 1753, had declared "it was by no means advisable . . . to Authorize the Council and House of Burgesses" to have this power.[2]

(d) But the Act of 1758 amended and partially repealed the Act of 1748, which had been confirmed; and it contained no suspending clause. Therefore the action of the assembly was entirely without authority, and the governor's signature was worthless. For acts once confirmed could not be amended by a lesser power than that which had established them—the joint action of king and assembly.[3] In consequence the act in question was at the time of making and thenceforth null, void, and no law at all.[4]

(e) Accordingly, when the Virginia courts were called upon to choose between the essentially contradictory acts of 1748 and 1758, it was their duty to disregard the latter as being beyond the constitutional power of the legislature to enact.[5]

(f) The Privy Council believed the act was originally void, and they expected the Virginia courts to disregard it. By omitting the word "repeal" from their order, they purposely distinguished between this instance and an ordinary disallowance.[6] They declared that if the question came before them in their judicial capacity, they would certainly declare the Two-Penny Act "no law" and "void *ab initio*."[7]

(g) Any other view would make the disallowance utterly "nugatory," since the law had expired before its disallowance

[1] Hening, V, 435, note. They asserted a right, however, to amend laws not formally ratified.

[2] Acts of the Privy Council, Colonial Series, IV, 175; a mss. copy is included in Camm's Brief, p. 271.

[3] Camm's Brief, p. 221. In 1696 Hartwell, Blair and Chilton wrote that when laws are "once ratified by the King, they can only be repealed by the King and General Assembly." Cal. St. Papers, Col., 1696–7, p. 654. Carter and Bland admit that this was the general rule; Carter, Letter, p. 6; Bland, Letter, p. 18; Perry, pp. 465, 487.

[4] *Ibid.*, p. 221.

[5] Perry, pp. 481, 510.

[6] Wirt's Henry, p. 40; Perry, p. 481.

[7] Perry, pp. 490, 510; Camm's Brief, p. 217.

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was known in Virginia.[1] But "this divests his Majesty of his whole Prerogative, for by this Means the Assembly, by annual temporary Acts, which cannot be disallowed here till they are expired, might elude all the Acts which have received the Royal Confirmation." This would involve a radical change in the British constitution, and would be a dangerous step towards "civil independency."[2]

(h) There are precedents for such action by the courts; in particular, "the Privy Council, on hearing an Appeal between Winthrop and Lechmore [*sic*] from Connecticut, 1727, judicially declared two Acts of Assembly passed in that Province void."[3]

(i) But entirely apart from all these considerations, "the Council and Assembly cannot make Laws like this of 1758, repugnant to Reason, and fundamentally unjust." Lord Hardwick, of the Council, and for twenty years Lord Chancellor, had declared the law invalid "from its manifest Injustice, if there had been no other Objection to it."[4] The law was "contrary to natural Justice & Equity," and therefore void, since it was retroactive, depriving the clergy of a part of the salary which they had already earned in 1757–8. This was "to sap the foundations of property."[5]

In defense of the validity of the act it was contended: (a) that as free-born English subjects, Virginians "must necessarily have a legal Constitution, that is, a Legislature, composed in part, of the Representatives of the People, who may enact laws for the internal Government of the Colony."[6] "From the nature of the *English* Constitution, it is evident that the Legislature of the Colony have a right to enact any Law they shall think necessary for their internal Government."[7] From the fundamental principles of the "Constitution [an] Act must have the force of Law, when passed by the Governor."[8] This

[1] Camm's Brief, p. 222; Perry, p. 516.
[2] Perry, p. 511.
[3] Camm's Brief, p. 221.
[4] *Ibid.*, pp. 217, 221.
[5] Perry, pp. 441, 465, 490, 514.
[6] Bland, Colonel Dismounted, in *Wm. and Mary Quarterly*, vol. 19, p. 33.
[7] *Ibid.*, p. 34.
[8] *Ibid.*, pp. 37, 38.

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natural right to local self-government had been confirmed by grants from the crown in the charters to the Virginia Company of 1606, 1609 and 1612, by the ordinance of 1621, and by the proposed charter of 1675.[1] Once granted, "if what Lord Coke says in Calvin's case is true," such a right could not be altered or abrogated.[2]

(b) Thus, "in accordance with the original Constitution of Virginia," the king's commission to Loudon authorized him, with the consent of the assembly, to make any laws not repugnant to those of England.[3]

(c) The king indeed reserved the right to disallow laws; but by the express language of the governor's commission, and by unbroken usage, disallowance took effect only from the time notice thereof was published in the colony, even when disallowance had been due to breach of the governor's instructions.[4]

(d) The governor's instructions were for his private guidance only, and were in no sense legally binding on the assembly. They were not public instruments, nor were their contents known except in part. Never having been promulgated, they could not have the force of law without violating the fundamentals of the British constitution, nor did the king intend them for more than a guide to the governor in the exercise of his discretionary powers.[5] If the governor violated his instructions, it was a matter for him to settle with his royal master.[6] But the fact that he had rendered himself liable to punishment, did not invalidate his signature.[7] Granting in general that the king's instructions should be respected, still grave and unforeseen emergencies might make instant action imperative, and hence lawful.[8] Previous governors had assented to laws in violation

[1] Respondents' Brief, pp. 225–32; Bland, *loc. cit.*, pp. 35, 36; Perry, p. 495. Henry's Henry, I, 40.

[2] Bland, *loc. cit.*, p. 37.

[3] Respondents' Brief, p. 263.

[4] *Ibid.*, pp. 255, 263.

[5] Bland, *loc. cit.*, p. 38; R. H. Lee, in Campbell, p. 513.

[6] Perry, p. 521.

[7] Bland, *loc. cit.*, pp. 38–40.

[8] Bland, Letter, p. 18; Carter, Letter, pp. 6–7; Campbell, p. 510; Perry, p. 467.

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of the letter of their instructions. Sometimes they had been reproved and the laws disallowed; sometimes the laws had been confirmed. But never had laws thus disallowed been declared void *ab initio*. The very fact that governors had been sharply reproved for violating their instructions showed that the laws thus assented to were not mere nullities.[1]

(e) The law of October 12, 1758, had been regularly passed, and assented to by the governor in due form. It was not disallowed until August 10, 1759, and notice was not received until June 27, 1760. "Till this Time therefore it was a good and valid Law in the colony, and the Inhabitants obliged to conform to it as such nor could any one justify the acting contrary to it." [2]

(f) The Council's disallowance of the Act was in the regular form, and did not expressly or by implication declare the law void *ab initio*.[3]

(g) The question of the invalidity of the Act because of its alleged injustice was not "pertinent to the present Question." [4] The Legislature was the judge of the justice of its laws; otherwise the colonists were not free men.[5] As a matter of fact, however, the law was not unjust. The emergency entirely justified it. It was general in terms, and did not apply specifically to the clergy. Furthermore, at two pence a pound, the salaries of the ministers were generously above the average of past years, and larger than it had ever been intended they should be.[6]

[1] Bland, *loc. cit.*, pp. 40–41. This is an important point. Governors had constantly violated their instructions. (Greene, Provincial Governor, pp. 164–165.) Instances of signing laws contrary to instructions appear in Acts Privy Council Colonial, III, 343, 617; IV, 59, 256, 308, 449, 488–9, 674, especially no. 155; Virginia Laws of 1748, V, 38–9, 50, 59, 215, 251, 395, 397, 577, 580, 583, 586; Archives of the State of New Jersey, 1st. Ser., X, 43; Mass. Acts and Resolves, II, 127, 593; *Journal Va. House of Burgesses*, 1758–1761, p. 285. A particularly significant case is in Cal. State Papers, Col., 1661–1668, p. 759.

[2] Respondents' Brief, p. 264.

[3] *Ibid.*, p. 268, quoting the order; R. H. Lee, in Campbell, p. 513.

[4] Respondents' Brief, p. 267.

[5] Perry, p. 495.

[6] Bland, Letter, p. 14 ff; Carter, Letter, pp. 5, 42, 51; Respondents' Brief, pp. 237–238.

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These arguments bring out clearly the logical steps by which the Two-Penny Cases led back to fundamental constitutional issues. Since the Act of 1758 could not have been affected by an ordinary disallowance, its validity in May, 1759, depended solely on the original right of the governor and assembly to pass it. This in turn involved the question whether the king's will as expressed in his instructions to the governor constituted a fundamental limitation on the legislative power of the governor and the assembly, a limitation, that is, of such a nature as to render null and void all actions which transgressed it. In the absence of clear precedents, this point could be determined only by a choice between radically different theories as to the source and nature of the assembly's legislative power, and of the extent of the governor's discretion.

In every one of the court decisions against them, the clergy naturally felt that public opinion, prejudice against the established church, official pressure, personal animosities, and selfish interests were arrayed against them.[1] Futhermore, in yielding to political considerations, and refusing a decision on the merits of the case, it was felt that the Privy Council had been guilty of a breach of faith.[2]

For us, the fact that the highest court of appeals avoided pronouncing on the constitutional question involved, robs the whole controversy of some of its interest. It is clear that the Council were in an embarrassing position. Undoubtedly they would have preferred to declare the Two-Penny Act invalid. But entirely apart from the political dangers of such a step, it is difficult to see how, on strictly legal grounds, they could have done so. Winthrop *v.* Lechmere had, it is true, asserted their right to declare a colonial law void from the beginning if it transcended charter limitations.[3] But it had never been established that an instruction to a governor was at all comparable to a charter limitation on the legislature. On the other hand, the principle that a colonial law was valid until its disallowance was made known was a long-established one.

[1] Perry, pp. 469, 477, 479, 481–2, 484, 496–7.

[2] Perry, pp. 520–521.

[3] 2 Mass. Hist. Soc. Coll, I, 8, 137. Thayer, Cases on Constitutional Law, I, 34.

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It is difficult therefore to avoid the conclusion that the Virginia courts were entirely justified in deciding as they did. Only by declaring the law of 1758 void from its passage as violating a higher law—the king's instructions, and natural justice—could they have decided otherwise; and it was certainly too early to expect that judges would do this as a matter of course.

The present doctrine of the power of courts to declare a law unconstitutional, rests on three assumptions:

First, that there is a distinction between ordinary and fundamental law. The power of the legislature is not absolute, but is limited by the fundamental law.

Second, when the legislature transcends the limits set to its powers by the fundamental law, its action is null and void, and no one is bound thereby.

Third, whenever in the ordinary course of administering justice, the courts encounter an apparent conflict between an ordinary act of the legislature and the fundamental law, they not only may but must consider and decide whether the ordinary law can be reconciled with the fundamental law. If they believe that no reconciliation is possible, it is their right and their duty to disregard the ordinary law entirely, deciding the case before them in all respects as if it had never existed.

In essence these three principles are clearly discernible in the Two-Penny Cases.

As to the first, it was asserted that the legislative power of the Virginia assembly was limited by the king's instructions and by the laws of natural justice.

Second, it was argued in so many words that the pretended law of 1758 was from the moment of passage null, void and no law at all, because in passing it the legislature violated both royal instructions and natural equity. Therefore no citizen was bound to obey it, nor could any official plead it in justification of any of his acts.

Third, the courts were asked to recognize and act on both of these principles. It was insisted that they should take notice of the conflict between the act of 1758 and fundamental law, as expressed in the instructions and natural equity. And they

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were urged to decide cases as if the law of 1758 had never existed.

The most significant sentence in Otis's speech on the Writs of Assistance was the declaration that "An act against the Constitution is void; an act against natural equity is void."[1] These were substantially the points raised in the Virginia cases also. In both instances, the judges ignored the natural justice plea; but the fact that it was advanced is another indication of the current belief that men had natural rights which the legislature might not lawfully violate. The mere fact, too, that good lawyers seriously urged the courts to disregard an act of assembly is interesting. It is significant that one jury, one bench of justices, and four of the ablest judges of the general court actually decided that the Act of 1758 had never been law. Of course the idea that courts might, and should, disregard a law as unconstitutional was not present in men's minds with anything like the clearness which it assumed a generation later. But in spite of that, these cases deserve to be considered along with Winthrop *v.* Lechmere, and the Writs of Assistance Case as helping to illustrate the long and gradual process by which the American doctrine of judical review took shape.

The Two-Penny Cases further find a place in the history of the long struggle for a greater degree of colonial legislative independence. For years American assemblies had been asserting rights analogous to those of Parliament. Just as the king could make laws for England only with the consent of Parliament, so it was felt he could legislate for the colonies only with the consent of the local assemblies. Any limitation on the freedom of action of the representatives of the people was resented and resisted. The Virginia assembly was not alone in refusing to recognize the king's right to bind them directly by instructions to his governors. The issue came up at various times in other colonies, and the legislative bodies regularly refused to yield the point.[2]

[1] John Adams, Works, II, 522.

[2] Hutchinson, History of Massachusetts Bay, III, 342. An important case in Pennsylvania is detailed in 5 Pa. Statutes at Large, p. 692 ff. Of New Jersey it is said

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The controversy over the act of 1758 thus deserves a place in the study of the pre-revolutionary period, but not primarily because it illustrated the presence of a seditious and rebellious spirit. Its real significance lies in the fact that for six critical years it helped to bring the people of Virginia face to face with fundamental questions. The legislative freedom of their assembly was imperiled. This made necessary a clear statement and a closely reasoned defense of the American view of the constitutional place of the colonies in the Empire; and in that work Patrick Henry's speech was far less significant than the widely read pamphlets of Carter and Bland. On a small scale, the whole episode illustrates the clash of political theories which lay back of the American Revolution. The arguments by which the colonists defended the law of 1758 were exactly the same as those on which they based their resistance to king, ministry and Parliament. The principles on which they relied were the ones on which they founded their whole political system. The entire controversy, like so many other incidents in colonial history, has been too exclusively regarded as a sign of growing irritation on the part of the colonists. Its importance as an incident in the attempted working-out of a new imperial system has been too largely overlooked.

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"the instructions represent only the ideas of the home government. They were absolutely binding, indeed, upon the royal appointees, but their binding force, while generally acquiesced in, was never admitted as absolute by all the colonists." Tanner, E. P., The Province of New Jersey, p. 150.

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NEW LIGHT ON THE MONROE DOCTRINE[1]

EXPLANATIONS of the great American tenet recall to mind a certain rollicking sport of our colonial ancestors. It is the case of the quarry that slips again and again from the grasp of the eager pursuers and, when finally caught, makes a lot of noise that nobody understands. One reason, then, for its popularity may be that it is so elusive in meaning and so vociferous in utterance. A better reason for its hold upon our sympathetic imagination is that, whereas no one knows exactly what it stands for, everyone knows, or thinks that he knows, what it is. Neither a principle nor a law, nor even, in a strict sense, a policy, it is, instead, a sentiment long cherished. In our popular consciousness it takes rank with union and independence in the triad of national harmony. It forms an essential part of our "Americanism," now undergoing so elaborate a process of definition.

To the minds of our people, furthermore, "Latin America" and the "Monroe Doctrine" are terms more or less synonymous. The southern republics of the New World, apparently, can have no individual characteristics nor attain a development of their own, unless dated from 1823. Anything written about them must be spurious, if the author has not contrived to slip in an allusion at least to the Monrovian dicta. The notion, of course, is absurd; but when it is expressed in the reverse order, it contains a large amount of truth, for if "Latin America" does not necessarily call up the "Monroe Doctrine," the "Monroe Doctrine" does evoke "Latin America."

A scientific treatment of the Doctrine cannot be limited to what the people and governments of the United States and Europe alone have written, said or done about it. The discussion must include an account of the Latin-American relation to it: what the Latin Americans themselves have thought about it, and how they have reacted toward it. In both cases, obviously, an accurate knowledge of the history and characteristics of the southern countries is presupposed. Most of our writers, however, and those of Europe as well, have seen fit largely to ignore any such participation of Latin America, and few of them have made an effort to obtain correct information about the conditions of the nations concerned. They may describe what they think our great

[1] See n. 1, p. 583 and n. 1, p. 586.

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pronunciamento was, is, will be, or ought to be, but they pay scant heed to the Latin-American viewpoint, and often are oblivious to errors about its historical or present setting.

Considered in the light of the times in which it was enunciated, and of the circumstances under which it has been properly applied on later occasions, the Monroe Doctrine, of course, contains three primary dicta. It prohibits future colonization in America by a non-American power, forbids an extension to the republics of the New World of the monarchical system by any countries of the Old, and, impliedly at least, asserts the determination of the United States to uphold the independence of these republics against aggression from any non-American quarter. In practice, also, the Monroe Doctrine has been justly interpreted to mean the prevention of non-American states from acquiring any part of an American republic's territory, even with its own consent, or under the guise of adjusting a boundary line. Similarly, it has been held to include the prevention of non-American states from occupying, more or less permanently, any portion of the lands belonging to an American republic, either as an act of war to obtain satisfaction of pecuniary claims, or to secure reparation in general for injuries committed to the persons or property of their nationals.

Just how these conceptions of the Monroe Doctrine make it incumbent upon the United States to assume responsibility for possible shortcomings on the part of other nations in the New World, whether this country is in duty bound to force the Latin-American republics to comply with their obligations, in case they evince a disposition to evade them by taking refuge in a supposed immunity afforded by the Doctrine, is a problem not by any means resolved. The United States, to be sure, has expressly disclaimed any intention of allowing the Doctrine to be used as a shield against the consequences of misbehavior. It has permitted European nations to employ measures of coercion, so long as the latter did not eventuate in an actual occupation of territory. Though not subscribing to the Latin-American contention that force should never be used by one nation against another for the collection of contractual debts, the United States promoted the adoption of the agreement reached at the Second Hague Conference, providing for a resort to arbitration before compulsion could be applied. It has utilized its position, also, as the most powerful country in America, for the purpose of bringing moral and physical suasion to bear. And yet the question remains as to how far the United States will go in upholding the Monroe Doctrine for the benefit of areas remote from its own shores.

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Although these various forms of interpreting and applying the Monroe Doctrine amount actually to a restriction imposed by this country upon the right of its fellow nations in the New World to alienate their territory as they see fit, the underlying principle seems to accord with the views that prevail practically throughout Latin America. Hence it is looked upon there, less as a diminution of abstract power, than as an enlargement of concrete protection. When, however, the particular application appears to infringe other sovereign rights, or wounds national honor or susceptibilities, it is apt to be far from welcome to the country affected.

These considerations lead to another respect in which writers on the Monroe Doctrine encounter serious difficulty. While composing their narratives and expounding their interpretations, they may help to confirm a popular impression that our course of action toward the rest of the New World, and toward some parts of the Old, is wholly or largely an outgrowth of the famous message. They fail to make a distinction between certain phenomena of national development in the western hemisphere and a presumed evolution of what Monroe once wrote to Congress. Three of the main aspects, certainly, of our relationship to the rest of America, and of the relationship of the rest of America to its constituent parts, have not been derived from the Monroe Doctrine, and none of them has necessarily any organic connection with it. Of these aspects, one is the headship, if not dominance, of the United States in the New World. Another is the tendency of all powerful and progressive nations to widen the territorial bounds of their political and commercial orbit—a tendency to which usage has assigned the term "imperialism". The third aspect is that appreciation of a community of problems and interests among the republics of America which, for the want of a better name, is called "Pan-Americanism".

Even looking at the matter from the angle of the Monroe Doctrine proper, there is nothing in its language which would support the notion that the great American dogma is a self-denying ordinance, unless, of course, an inference is drawn from the general assumption that what one forbids others to do he may not do himself. Such an assumption, however, is refuted by the history of both the United States and the Latin-American republics since 1823. The Monroe Doctrine does not prohibit any of the countries of America from acquiring a position of headship over the others. It does not forbid any of the American nations to do to its fellows, or to European colonists on this side of the ocean, precisely the things from which outsiders are excluded. Nor does it bar their entering upon a closeness of relationship which might betoken a solidarity of concern over against the rest of the world.

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The possession of vast natural resources developed by European capital and immigration, in union with the enterprising spirit of our Anglo-American ancestors, has enabled the United States to advance to a position of headship in the New World that is unique in international affairs. Outwardly, at least, in its exercise of regulation, that headship bears some resemblance to the erstwhile concert of the powers of Europe, even if it lacks the balance the latter once had. It has to do with the action of one nation instead of several; and however monotonous its unison of tone, it assuredly has had the merit of striking no discords. On the other hand, none of the Latin-American republics has ever advanced of its own momentum to a position of substantial equality with the United States, and none seems likely to do so.

In the exercise of the dominance consequent upon its national development, and not because of the Monroe Doctrine, the United States has declared itself unwilling to allow a European country, possessing colonies in this part of the globe, to transfer them to another power without our express consent. It has acquired a number of naval stations. It has asserted its right to sole ownership in the Panama Canal, and taken measures to insure to itself a similar right over waterways that may hereafter be constructed between the two oceans.

In the Caribbean region, and even farther to the southward, the United States has intervened in the internal affairs of Latin-American nations, to maintain order, to secure fair elections, to rehabilitate finances, to enforce rules of sanitation and to investigate reports of ill-treatment of Indians. It has imposed its mediation upon belligerent countries and placed them under military restraint; has determined whether or not a particular president should be recognized, and has actually created two of the Latin-American republics, in the one case by emancipation from a European state and in the other, by separation from a Spanish-American country. It has established, finally, the system of periodical meetings of delegates from the twenty-one republics, known as the "International Conference of American States," for the treatment of problems more or less common to them all, and also the international institution at Washington, called the "Pan-American Union," for the diffusion of information about them.

As illustrated by these and similar activities, the United States has introduced into the Latin-American countries concerned a new kind of political tutelage. Supposedly independent and sovereign nations have been placed, not under a protectorate as such, but under a special form of guardianship which limits the enjoyment of independence and the exercise of sovereignty to the extent that our government thinks need-

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ful to insure their stability, solvency, cleanliness and general good behavior.

Alluding now to the second of the aspects of inter-American relationship under discussion, it need only be remembered that the mighty growth of the United States and, during the past forty years, the rapid progress as well of the Argentine Republic, Brazil and Chile, have led each of these nations, in the measure of its strength and opportunity, to widen its frontiers. Our own country has gained much of its territory at the expense of Spanish-American states. Whether justifiable or not, the fact supplies evidence of an imperialism that has awakened not a little misgiving among our neighbors. Many of them, doubtless, would be pleased to have us fix irrevocably a southern limit to our national expansion, territorially if not also in other respects, but their desires are not likely to be fulfilled. Equally improbable is it that all the Latin-American countries themselves would be disposed to enter into a compact forbidding future acquisition of territory at one another's expense. Recent presidential asseverations, moreover, about the policy of the United States never to take another inch of Latin-American soil, really amount to very little, so long as masked protectorates and economic absorptiveness seem to be quite as conducive, in our judgment, as actual annexation to the welfare of the politically troubled.

Of Pan-Americanism, the third aspect of the relationship in question, only one feature calls for treatment in the present connection, namely, the tendency toward creating in the New World a concert of American powers. Instead of acting alone, as hitherto has been the case, the United States has seen fit to coöperate with the stronger and more progressive countries to the south in the exercise of such a degree of supervision and regulation of the affairs of the other nations as circumstances may warrant. While throwing about the Monroe Doctrine proper the safeguard of international American support, Pan-Americanism leaves the headship of the United States, as the chief member of the combination, substantially intact, and has the further advantage of tending to abate among the Latin-Americans themselves the fear of our imperialism. It avoids wounding, also, the self-pride of the larger and more important nations. At the same time it enhances their prestige, and reconciles their smaller and weaker neighbors more readily to any needful processes of international guidance.

The rise of such a "Concert of the Western World" is due primarily to two causes. First in order must be reckoned the extraordinary growth in strength and prestige, and the enhancement of a sense of community of interest, attained by the Argentine Republic, Brazil

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and Chile. Secondly, a feeling has developed in the United States that what lies south of the Amazon stands in a different international category, so far as we are directly concerned, from what, strategically as well as geographically, is near the United States itself. Whether this attitude of mind, on our part, is a consequence of the rise of the "A B C," or proceeds from a closer concentration of our attention on the periphery of the Caribbean in the furtherance of economic and political aims, or is derived from both together, is not yet determined.

In the light of this discussion of the three aspects of inter-American relationship, accordingly, one may venture the belief that most of our policy toward the Latin-American republics has been shaped, not by interpretations or even distortions of the Monroe Doctrine, so much as by considerations and circumstances quite apart from it. This policy has been dictated, instead, by a desire to uphold our political preponderance and promote our commercial aggrandizement in the western hemisphere, at the same time strengthening throughout the continents and islands a sense of inter-American solidarity, of which the headship of the United States shall be the outward and visible sign.

If all the foregoing premises are sound, writers who describe the origin and development of the Monroe Doctrine, define its significance past and present, and deal with its possible future, ought to bear three things in mind. These are: first, a recognition of the fact that essentially it is not a doctrine at all but a sentiment; second, that for its proper exposition in connection with Latin America, it requires a broadly correct and sympathetic knowledge alike of the history and of the actual conditions of that area; and third, that the national position and activities of the United States, within and without the New World, are not an evidence of the efficacy of the Monrovian dicta. To trace the inception and evolution of the Doctrine in detail, to quote what statesmen, publicists, professors and others have said or written about it, and to set forth one's own views on the subject, are useful services indeed; but, in the opinion of the present writer, for the sake of clearness and accuracy the three criteria in question ought consistently to be heeded.

Of all the works on the Monroe Doctrine, that by Professor Albert Bushnell Hart[1] is the broadest in scope and content. Less technical and specific than the treatise by Kraus, it aims apparently to provide a semi-popular account that will attract the general reader as well as the average student. Somewhat more than half of the volume is de-

[1] The Monroe Doctrine: An Interpretation. By Albert Bushnell Hart. Boston, Little, Brown, and Company, 1916.—xiv, 445 pp.

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voted to history, the remainder to interpretation and prophecy. At the close is a classified bibliography, most of whose items are accompanied by comments. Foot-notes and references do not appear. In their stead, quotations from the sources are abundantly supplied.

In the historical portion of the work the development of the "original Monroe Doctrine" is traced from 1775 to 1826. "Variations" of it are then followed up to 1869, at which time the "American Doctrine," that of "paramount interest," definitely took its place and receives consideration up to 1915. Under the head of interpretation, the first topic, "Present-Day Doctrines," is made to include the "Latin-American," the "German" and the "Pacific and Asiatic." The second topic, "Present World Conditions," comprises recent changes in international affairs, the "Doctrine of American Protectorates," and the relation of the "American Doctrine" to commerce. In the third and last topic the "Doctrine of Permanent Interest" is treated, involving a "Search for the Doctrine of the Future" and the "peaceful," as well as the "military," maintenance of existing doctrines and of those possibly to come.

At the opening of his first chapter Professor Hart states his conception of the Monroe Doctrine, and indicates how it should be regarded. To quote his own words, the

> variety and uncertainty as to what the Monroe Doctrine really is, arises from an attempt to misuse the phrases which were put forward in 1823 for immediate consumption, in order to forestall difficulties then serious but now mostly passed by. These phrases have been made to cover policies and controversies which were not in the minds of the men of 1823; they could not possibly foresee the immense changes in conditions in Europe, in the world at large, and especially in America, which have required new statements of policy. Hence nobody nowadays knows just what is meant by the phrase "Monroe Doctrine"—it is a changeable expression, used frequently to electrify current opinions on the relations of the United States with Latin America by dynamic statements made a century ago.
>
> There is however a perpetual national policy which needs no authority from President Monroe or any later public man, to make it necessary or valid. It is the daily common-sense recognition of the geographic and political fact that the United States of America is by fact and by right more interested in American affairs, both on the northern and southern continents, than any European power can possibly be.
>
> What is called the Monroe Doctrine, in all its varieties and ramifications, is only an attempt to apply this simple principle to changing needs and conditions. Let us call this obvious undeniable principle, which includes the formal statements of ten presidents and twenty secretaries of state, the

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American Doctrine. Of late the conditions in America have grown very difficult; in the last twenty years new and far-reaching enlargements of policy have been revealed; while the European war of 1914 has disturbed the international organization of the world and introduced a new element of complication into the relations of the American nations between themselves and with foreign countries. These perplexing changes must also be taken into account in the endeavor to state clearly the present meaning and extent of the Monroe Doctrine [pages 1–2].

With the viewpoint of the author on the matter of the elusiveness of the Monroe Doctrine, and on the possible desirability of using in its stead a designation more correctly descriptive of our foreign policy, the present writer is in thorough agreement. But he dissents from the characterization of the Doctrine as a "fact" (page v), or as a "principle" (page 1). Nor does he believe it possible "to state clearly the present meaning and extent of the Monroe Doctrine." Without wishing to make the first, or indeed any, of the criteria already mentioned too arbitrary or procrustean in application, he ventures to reassert his opinion that the Doctrine is a "sentiment" and should be treated accordingly.

Though Professor Hart accords to the participation of Latin America in the development of the Monroe Doctrine proper, and in that of its successors, as discussed below, a considerable amount of recognition, he does not evince that familiarity with the southern countries which an adequate presentation of the matter demands. His allusions to their history, in fact, contain many errors and misstatements that require correction. Nor does he appreciate sufficiently the Latin-American point of view. The "doctrines" of Calvo and Drago, along with a reference to the opinions of one or two other publicists, should be supplemented liberally from the history and political literature of the southern republics. Otherwise the share of the thought and action of Latin America fails to secure due representation.

In the passage already quoted the author intimates quite clearly that our varying attitude on questions relative to the other nations of the Western Hemisphere and to the world at large, and all the "doctrines" which have arisen in that connection, are not outgrowths of the Monroe Doctrine. This intimation he strengthens later by remarking that the paramount interest of the United States, "*for its own sake*, against Europe's obtaining new footholds in America . . . exists in the nature of things, would have existed without any public Doctrine, and would continue to exist, even if the United States should by statute declare the Monroe Doctrine to be abrogated" (page 366). He thus ac-

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knowledges that the dominant position of this country, a direct result of its own development, is in reality the thing that counts. The fact was not patent in 1823 nor for some years thereafter. But when it definitely appeared, the Monroe Doctrine as such disappeared, and the "American Doctrine," the "Doctrine of Paramount Interest," or the "Doctrine of Permanent Interest," to use the author's own term, or some form of a national profession of faith on the subject of foreign policy, took its place. If this be true, what Professor Hart in reality has composed is a treatise on the evolution of the foreign policy of the United States, partially as related, but chiefly as unrelated, to the Monroe Doctrine.

Had the author arranged his material more logically by tracing the evolution of particular theories, instead of adhering so closely to the sequence of time in general, and had he not employed the term "doctrine" so frequently in reference to opinions that were not "doctrines" at all, the impression left on the reader's mind might have been clearer. Had he stressed more sharply, also, the difference between the real Monroe Doctrine and its alleged successors, he might have contributed more efficaciously to the good work of dissipating popular notions about their essential identity. At times he adduces a number of incidents without making their relevancy altogether evident (e. g., chapter xii). Conjectures, furthermore, about the future policy of our own nation and others may suggest indeed a gift of prophecy, but they appear somewhat out of order in cases where one man's guess is apt to be as good as another's. Nor is the use of jaunty expressions, like "wakes people up," "gold brick," "cooled their heels," "thundering big stick" and "Monrovoid," entirely in keeping with the serious character of the work. Doubtless, also, when Professor Hart brings out a revised edition he will eliminate the large number of mistakes about Latin America and other matters. Space does not permit recording them here; but the reviewer must occupy enough of it to express his dissent from the statement (page 401) that "no prophet since the time of Elijah has enjoyed predicting evil." Shades of Jeremiah!

Whereas Professor Hart deals with the Monroe Doctrine historically, exegetically and prophetically, another writer, Mr. Charles H. Sherrill,[1] advocates the promotion of Pan-Americanism by a process of what he terms "modernizing" the message of 1823. Nowhere, however, does he define "Pan-Americanism," or undertake to show whether the

[1] Modernizing the Monroe Doctrine. By Charles H. Sherrill. New York, Houghton Mifflin Company, 1916.—xiv, 203 pp.

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Monroe Doctrine as a sentiment is being replaced by something more in the nature of a practical policy. He accepts the Doctrine as our people commonly regard it, and refrains from indulgence in any scientific discussion of the matter. He offers, instead, a variety of interesting, and sometimes novel, observations and suggestions about the wisdom of understanding and appreciating our Latin-American neighbors, and about the desirability, also, of effecting a number of political and territorial changes in the Western hemisphere which might redound to the advantage of the United States, its fellow republics and the cause of universal peace.

Two of the chapters, dealing with the encouragement of our foreign trade, though sound and practical enough in content, seem not altogether germane to the subject. The frequent allusions of the author, furthermore, to the Argentine Republic and its capital city, with which he is so well acquainted, are apt to create an impression that what he says about them is thoroughly characteristic of the Latin-American countries as a whole. Were this really true, the Monroe Doctrine might require neither modernization nor interpretation. A few errors, or dubious assertions, on pages 2, 3, 7, 11, 13, 74, 96, 122, 141, 151 and 193 need attention.

Starting substantially from the viewpoint, or perhaps conviction, that "America for the Americans" is and ought to be the spirit actuating the Monroe Doctrine, Mr. Sherrill sketches a plan for the establishment of what he calls ingeniously a "Pan-American Triangle of Peace," the base of which is to rest on "joint mediation to prevent wars in this hemisphere," its easterly side, on a "completed Monroe Doctrine to prevent friction with Europe," and its westerly side, on "practising across the Pacific what the Monroe Doctrine preaches." Incidental to the solution of this problem in international geometry, he discusses also the relation of the Panama Canal to Pan-Americanism and the feasibility of "a strengthening of the Latin-American map."

Despite the apparent inference that the reader will draw from page 111, the idea of an American concert for the adjustment of international disputes on this side of the water is hardly original with Mr. Sherrill. To go no further back, it finds its prototype readily enough in the joint action of the United States and Mexico regarding the Central-American situation in 1907. Few of our people, moreover, would be inclined just yet to accept as the "two most outstanding results" of the recent "A B C" mediation, "first, that a High Court of Public Opinion has been established for the Western Hemisphere, and second, that the Monroe Doctrine suddenly became continental and is no

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longer, even in the opinion of Latin-America, unilateral and constabulary" (page 121). Many of us, on the other hand, would support Mr. Sherrill in his strictures upon the "impropriety of foreign interference in any way with the sovereignty of a nation."

On its easterly side the construction of the "triangle for peace," through a "completed Monroe Doctrine," requires that European countries "release to the sovereignty of the peoples themselves all colonial territory" owned by them in America (page 137). This, the author believes, ought to be done as a "graceful recognition of all we are doing and shall do" for them—in the shape of loans and credits. If the powers concerned want financial compensation, in addition to their sense of gratitude, we can arrange to furnish it. With the exception of Canada and Newfoundland, all the European colonies over here are in a lamentable condition, and might stand a chance of betterment, if freed from their present control. All impediments to our complete ownership and management of the Panama Canal, also, should be withdrawn by England in return for our "favorable consideration of England's wishes in any other regard." Just in what respects our monetary aid to European countries, thus to be shorn of their colonial dominion in the New World, has been an eleemosynary or altruistic transaction on our part, Mr. Sherrill does not specify, and his hint as to England might be called a trifle cryptic.

If a feeling of thankfulness and the receipt of an inducement in money were not sufficient for the purpose, the westerly side of the "triangle for peace" now comes into view. As an effective means of quieting all foreign apprehensions about our possible designs in the Pacific region, the United States might agree also to relinquish any special claims or presumptions on the subject of the "open door in China," resting our rights instead on the "most favored nation" clauses of treaties. Still further, it might renounce possession of the Philippines. In return for this generous conduct, the European powers, on their part, could well afford to retire politically from the Western Hemisphere altogether. Thus, in Mr. Sherrill's opinion,

> at one step we should eliminate Japanese distrust caused by our holding the Philippines, honorably release us from the responsibility for those islands, complete the protection from European entanglements initiated by Monroe's protest against additional European colonization, and, finally, free us from European military bases near the Panama Canal, and foreign control of the Canal's operation [page 179].

Liberation from Europe, however, should not mean independence for

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the colonial areas south of Canada. On the contrary, the West-Indian portion in general must be turned over to the United States, while the remainder is distributed equitably among the Latin-American countries.

Just how the United States can draw an augury from the policy of Japan toward China which would indicate that our rights under the "most favored nation" clauses of treaties are likely to be respected by the island empire, Mr. Sherrill does not explain. Neither does he descant upon the spectacle of a four-power scramble for the Philippines when the American flag is hauled down. How would the Philippines be divided among Denmark, Holland, France and England? "That would be for them, not for us, to decide" (page 179). But what advantage does the general cause of world-peace derive from a transference of Japanese distrust to some other nation? It might be conserved better by transferring the islands themselves to Japan. Then, were this act of magnanimity followed by a gift of all other American possessions in the Pacific to the "Land of the Rising Sun", the latter's placation, doubtless, would be complete!

Whatever the practicability of Mr. Sherrill's suggestions for territorial and political readjustment, some of them certainly furnish profitable themes for discussion. In company with what is offered by Professor Hart's elaborate work, they help to shed new light on the Monroe Doctrine.

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McKINLEY AND FORAKER[1]

THE author of a recent book on later American history has designated the period from about 1902 to 1908 as the era of the "muck-rakers." During these years many of the weekly and monthly magazines of the country were filled with articles by such popular writers as Lincoln Steffens, Thomas Lawson and Ida Tarbell. Though treating of a great variety of subjects, the central theme of their contributions was summed up in the phrase, "the corrupt alliance between politics and big business." Many of the independent and progressive, as well as "yellow," dailies contained editorials and special feature articles on the same general theme. Some of the journalists had the sympathetic ear of the head of the national administration, despite the fact that Mr. Roosevelt had adopted the term "muck-rakers" as one of reproach. In speeches, authorized interviews, and in state papers, the administration proclaimed its conviction that the ordinary citizen had not been receiving the "square deal" to which our American system entitled him.

Advertised and supported by one in so high a position as president of the United States, these reformers succeeded in carrying with them a large body of public opinion. The influence of the "muck-rakers," in arousing political and economic discontent and suspicion, seems to have reached its climax about the time of the presidential campaign of 1908. So clearly recognized was their power that many a member of the national Congress, as well as other public officials seeking reëlection, sought for clean "bills of health" from the head of the administration. Such as obtained the desired certificate were relatively free from interference by self-appointed investigators, but those who neglected to seek, or seeking, failed to obtain such indorsements, became the victims of all sorts of inquiries into the records of their public and private affairs.

Among those who never sought a favorable statement from the retiring President, perhaps the most conspicuous was Joseph Benson Foraker, for twelve years a Republican senator from Ohio. For some

[1] The Life of William McKinley. By Charles S. Olcott. Boston, Houghton Mifflin Company, 1916.—Two volumes, xvi, 400; viii, 418 pp.

Notes of a Busy Life. By Joseph Benson Foraker. Cincinnati, Stewart and Kidd Company, 1916.—Two volumes, xv, 511; vi, 584 pp.

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time before 1908 Mr. Foraker had not been in the good graces of the head of his party. Neither had his recent relations with the presidential nominee of his party been altogether pleasant and friendly. However, it appears that sometime during the early part of September, the friends of the Senator and of the Republican candidate for president had effected some sort of reconciliation, and on the 16th, it was publicly announced that Mr. Foraker had been invited to preside at a great meeting to be held in Cincinnati on the 22d, at which Mr. Taft would appear as principal speaker. In the meantime, on the 18th, the papers printed a "disclosure" in regard to Mr. Foraker that had been made the evening before in Columbus in the course of an address delivered by Mr. William R. Hearst. By some means Mr. Hearst had secured some letters written to Senator Foraker by Mr. John D. Archbold of the Standard Oil Company, a corporation whose history Miss Ida Tarbell had disclosed to the public some five years before through the medium of *McClure's Magazine*.

The letters which Mr. Hearst read disclosed the fact that not only had Senator Foraker at one time been in the employ of the Standard Oil Company, but that Mr. Archbold had been in the habit of writing from time to time to Mr. Foraker, expressing the opinion that such and such proposed legislation was "vicious," and adding the hope that the Senator might see the matter in the same light. Mr. Hearst also tried to prove, by means of another letter from Mr. Archbold, that for his services in preventing such "vicious" legislation, Mr. Foraker had received as much as $50,000 from the Standard Oil Company. The papers of the 19th carried a vigorous reply to Mr. Hearst's charges, in which Mr. Foraker certainly cleared himself of the specific accusation that he had ever received any compensation from Mr. Archbold for preventing "vicious" legislation. However, the same papers which printed this reply also printed intimations that Mr. Taft would be embarrassed to have Senator Foraker preside at the meeting planned for the 23d. The Senator informed the Republican nominee that he understood the purport of the intimations, and had concluded to relieve him of all embarrassment by not attending the meeting. Mr. Taft made no comments on the "disclosure" further than to state in a published interview a few days later that he had no desire to "strike a man when he was down." This ended the matter so far as Mr. Taft personally was concerned. Not so, however, with Mr. Taft's vigorous friend, the head of the retiring administration. He lost no time in putting the Republican members of the Ohio legislature on notice that to reëlect Mr. Foraker to the Senate would be regarded as nothing

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short of treason to the party. Whether, without the active opposition of one so high in authority, Mr. Foraker could have retained his seat in the Senate in view of the Hearst letters, is problematical. With such opposition his defeat was assured, and on March 4, 1909, Joseph Benson Foraker retired to private life.

His retirement, and the subsequent passing of many others of whom he was merely a type, is significant of the fact that at last the American people were beginning to question the justice and righteousness of a political and economic system constructed on the basis of allowing the individual citizen freedom to pursue unrestrained his own selfish ends. The reformers and "muck-rakers" for half a decade had been disclosing to them some of the evil economic and political results of that system. Many people were beginning to believe that men like Foraker were bent upon the perpetuation of those evil results. His elimination is an indication that the people had no intention of suffering such perpetuation without a struggle. Mr. Foraker was among the first of prominent politicians to be retired because of their too close connection with "Big Business." His attitude toward the relationship between big business and politics, of which everybody was just then thinking and talking, may be gleaned from a chance sentence or two which he employed in his reply to Mr. Hearst's attacks. Speaking of his employment by the Standard Oil Company in 1899, he said:

> That I was so employed as one of its counsel in connection with its affairs in Ohio where it was attacked in the courts and in the legislature was common knowledge at the time; at least I never made any effort to conceal the fact. On the contrary, I was pleased to have people know that I had such clients. It had not then become discreditable, but was considered just the reverse, to be employed by such corporations.

Although such a boast seems at the present time to indicate a dull conception of the obligations which official position involves, nevertheless, it should be remembered that after all it merely reveals the almost universal practice of the time. Therefore, the man who made the confession certainly deserves no exceptional reprobation. In certain respects he served his country well. How well, he attempts to make clear in his recently published autobiography.

This autobiography and a recently published biography of William McKinley, a fellow Ohian and contemporary of Mr. Foraker, may with profit be read at the same time, not because they are in any way antithetical, but because they are so similar. Both books are written by special pleaders and intense partisans, the McKinley biographer, Mr.

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Charles S. Olcott, revealing himself to be, if anything, even more of an "old guard" Republican than does Mr. Foraker. Moreover, the careers of McKinley and Foraker were closely connected, and their fundamental principles were essentially identical. Hence a brief review of their earlier environment and experiences, together with a more extended narrative of their later associations and actions, will perhaps aid one in comprehending the genesis and logic of their philosophy of morals and politics, and at the same time serve to render intelligible their willingness to forward in politics the interests of big business.

Both McKinley and Foraker were born in Ohio, the former at Niles in 1843, the latter at Rainsboro in 1846. Their ancestry was similar —typical pioneers of New England origin. McKinley's father was a miner and manufacturer of iron on a small scale; Foraker's, a farmer, miller, and vendor of general merchandise—occupations calling for little collective enterprise but much individual initiative and effort. The society in which the two future statesmen spent their boyhoods was a society of the jack-of-all-trades, where nearly every man was an average man. In epigram, the ideal of the westerner of the period perhaps would have been, "each for himself," and while the hindmost was not quite consigned to the devil, he was saved, not by society, but by individual human kindness and charity. The politics which these young men heard discussed, and which at an early age attracted both, emphasized the ideas of individual liberty and freedom from interference in the private business of the citizen. This early environment could not have failed to make a lasting impression upon the minds of the two youths.

When the Civil War came, both McKinley and Foraker, as was to be expected, volunteered and became members of Ohio regiments. That both possessed qualities of leadership is indicated by the fact that McKinley came out of the war at twenty-two, a breveted major, and Foraker, three years his junior, was breveted captain just previous to his honorable discharge in May, 1865. The war being over, it was natural that they should turn from military service to the law as the surest avenue toward that public leadership for which they felt they were fitted. After two years' study, McKinley was admitted to the bar and opened an office in Canton in 1867. Foraker, after pursuing a collegiate course at Ohio Wesleyan and the newly founded Cornell University, began his legal career in Cincinnati in 1869. Of the two, Foraker was the more successful lawyer, and throughout his active life continued to keep up his practice at the bar. He was elected a superior court judge in the Cincinnati district in 1879 and served until

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1882, when he resigned, as he says, on account of ill health. McKinley's career as a lawyer was briefer, since he virtually abandoned his profession in 1876, when elected to represent his district in Congress. He continued his service in Congress with one short interruption until 1890, when he was defeated, his defeat, according to his biographer, being due partly to the gerrymandering of his district, and partly to the temporary unpopularity of the Tariff Act of 1890 of which he was largely the author.

In dealing with the tariff, Mr. Olcott makes no effort to conceal his thorough sympathy with the protectionist principles of the subject of his biography. In a chapter, well written but extremely partial to the protectionist point of view, the author reviews the history of the tariff from the inception of the government down to 1877. At this time, says Mr. Olcott,

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there was need of a new champion to enter the lists for Protection and the "American System" of Clay; to study the subject with statesmanlike grasp; to master the details of schedules according to the facts in each industry, and to plan a comprehensive system, based upon facts, that would make for the permanent prosperity of the whole country. William McKinley saw the need and realized his opportunity. It was a chance to serve his country again, and it made the same appeal to his sense of patriotism as had the call to arms in 1861. . . . McKinley soon rose to a position of leadership and placed his name permanently in history, with those of Hamilton and Clay, as a strong, able, honest, consistent and patriotic advocate of Protection [I, 113].

Another quotation from Mr. Olcott will throw additional light on McKinley's readiness to make the tariff the object of his especial solicitude:

McKinley's resolution to specialize upon the tariff was a natural one for him to make. His father and grandfather were both manufacturers of iron, an industry which depended heavily upon the protective tariff. The counties of Stark, Mahoning, and Columbiana were rich in coal mines and well filled with furnaces, mills, and factories for the manufacture of a variety of objects. In East Liverpool there were potteries employing a thousand men, a new but thriving industry. All of these had been started under the fostering care of protective duties. Capital had been invested with the expectation that the Government would continue to guard them against foreign competition. For sixteen years McKinley had witnessed, within the limits of his own district, a striking demonstration of the possibilities of industrial development under wise protective legislation. If protection had proved a

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benefit to his own district, and to the state of Ohio, why would not the same principle be applicable to the whole country? [I, 130].

Thus we find McKinley a staunch champion of the protective system for the two reasons that it accorded with the major industrial interest of his constituents and because, as he himself said, expressing the cardinal principle of the Protectionist school: "It is our duty and we ought to protect as sacredly and assuredly the labor and industry of the United States as we would protect her honor from taint or her territory from invasion."

In all other matters except in the protection of American industries from foreign competition, McKinley was a disciple of the *laissez-faire* theory of political economy. Within the country, business should be free. Each individual should be at liberty to enter any business he pleased, employ such labor as he saw fit under conditions that were to be determined almost if not wholly by private contract between employer and employee, buy in the cheapest market and sell in the dearest, and appropriate any and all sorts of natural resources to the purposes of private ownership and exploitation. In all this, of course, there should be a minimum of state interference. Free competition alone should be the regulator of prices, of quality of goods, and of hours of labor and conditions of employment. In his theories of government and business, McKinley was simply a type of the Republican politician and business man of his generation. To be sure, there were persons in the last quarter of the nineteenth century who had a different opinion in regard to the function of government, who believed in strong state and federal control of business and even ownership of some public utilities, but such persons found no place among organization Republicans, and were little more welcome among the Democrats. They were usually Greenbackers or Populists, or belonged to the still more radical groups which began to attract attention during the hard times of the early nineties.

Indeed, it is not an easy task for the student to discern a great deal of difference between organization Republicans and organization Democrats during this period. It is true that in 1888 and again in 1892 the party platforms had somewhat opposite planks in regard to the protective tariff, but a close examination of the Democratic tariff of 1894 fails to disclose that it was much, if any, more nearly a tariff for revenue only than was the famous McKinley Act of 1890, which served so well as an object of attack for Democratic spell-binders in the campaigns of 1890 and 1892. Of course the Republicans claimed to be

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more national in their outlook, and they never tired of pointing out in their platforms and campaign speeches how theirs was the party of great moral ideas, which had saved the union and transformed four million chattels into human beings clothed with all the rights and privileges which appertained to free American citizens; and how their opponents' was the party of copperheadism and disunion—"rum, Romanism, and rebellion," as the Reverend Mr. Burchard expressed it in the campaign of 1884. But such differences were mostly verbal, perhaps spiritual too, but not very practical, for the only two laws of the period designed to increase the powers of the national government, the Interstate Commerce Commission Act and the Sherman Anti-Trust Act, were supported by a majority of both parties in Congress. The only act of importance which in any sense may be called moral was the Civil Service Law of 1883, whose author, George H. Pendleton, was a prominent Democrat. It is true that the Republicans in 1890 did attempt to give force to their boast that the colored population of the South had been clothed with all the rights of free American citizens, by introducing a bill providing for federal control of congressional elections, the so-called Force Bill, but it failed of passage in the Senate due to the defection of certain western silver Republican senators. On the question of bimetallism both parties pursued a straddling policy from 1877 to 1894. Both the Bland-Allison Act and the Sherman Silver Purchase Act were compromises with the free-silverites, and both received bi-partisan support.

For both these acts McKinley voted—about the only mistakes, which, according to his biographer, he ever made. Even for these errors, Mr. Olcott is inclined to pardon him on the ground that

> there was a strong demand throughout the country for a larger circulation of money, and this meant silver. Nowhere was this more pronounced than in Ohio, where the legislature had passed a resolution, by nearly a unanimous vote, that "common honesty to the taxpayers, the letter and spirit of the contract under which the great body of its indebtedness was assumed by the United States, and true financial wisdom, each and all demand the restoration of the silver dollar to its former rank as lawful money. . . ." [McKinley] voted for the free coinage of silver, not because he wanted cheap money, but because he believed the parity of gold and silver dollars could be maintained under that system, and that the silver dollar, therefore, would be an honest dollar. When he saw his mistake, he did not hesitate to combat the fallacy with the full strength of his maturer judgment [I, 203, 207].

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McKinley's ultimate willingness "to combat the fallacy" made possible his nomination for president by the Republican party in 1896. In 1891, during his first campaign for governor of Ohio, McKinley began slowly and cautiously to oppose the free and unlimited coinage of silver. In his second campaign in 1893, when it became tolerably clear that sentiment in the state was undergoing a change, he began to take stronger, though not yet positive, ground in favor of the gold standard. But, by 1895, when Mark Hanna was getting his remarkable campaign for McKinley's nomination for president well under way, that astute business-man politician was able to assure other party leaders that McKinley was perfectly "sound" on the money question. Of the relations between Hanna and McKinley, Mr. Olcott says that "McKinley was at all times the chief and was so recognized by his able political manager"—a statement with which the captious critic might justifiably take issue. Mr. Hanna's motives in making such great efforts to forward Mr. McKinley's presidential aspirations, Mr. Olcott attributes first, to "genuine admiration and love of McKinley as a man," and second, to his "profound belief that the prosperity of the people and the best business interests of the country" depended upon McKinley's election.

Due somewhat to his own availability, but more especially to the astuteness of Hanna as a political organizer and boomer, as the time approached for the meeting of the Republican convention, it became apparent to all that McKinley was the logical candidate. To Joseph Benson Foraker fell the honor of making the nomination speech, "a characteristically forceful oration," as Mr. Olcott describes it.

At this time, next to Hanna and McKinley, Foraker, now senator-elect from Ohio, was the most influential man in the politics of the state. He had come into prominence first in 1883 when he was nominated by the Republicans for governor. Though defeated in that year he was renominated and elected in 1885 and again in 1887. In 1889, for the fourth consecutive time, he was the nominee of his party, but for the second time was defeated. In the meantime he had gained recognition outside his own state on account of ability displayed in the Republican conventions of 1884 and 1888 as one of the managers for John Sherman on the floor of the conventions. On both these occasions he placed Sherman in nomination, and in the latter year he claims that the effect of his speech made him the favorite of the convention. In his own opinion, he could have received the nomination himself had he been willing to make a deal with the Blaine men and "sell out" Sherman, as Garfield, some claimed, had done in 1880.

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Though always orthodox in his republicanism and ever on friendly understanding with the business interests with which his party was affiliated, still Foraker was not what is termed a *machine* politician. His success was due rather to his recognized ability as an orator. In this respect he was somewhat unique among his fellow party-leaders of the period, but it should be noted that his forensic reputation was made and his greatest successes at the polls registered during the four years covered by the first administration of Grover Cleveland, when there was a decided effort made by some Republicans to revive the "bloody shirt" as a political issue. The effort seems to have brought a good many votes under the Republican emblem. That Foraker was a past master in the use of this issue is indicated by the fiery tone of many of the speeches which he delivered at the time, and which he has seen fit to incorporate in whole or in part in his autobiography. His methods tended to repel some men like ex-President Hayes, who during his administration had made a conscientious effort to relegate the "bloody shirt" to the background and disliked to see it brought to the front again. On November 5, 1889, the venerable ex-President confided to his diary the following sentiment in regard to Foraker: "He is brilliant, witty, eloquent and very popular with the hurrah boys, but the sober and conservative element of the party dislike his methods and would be glad to see him run behind the ticket."

Foraker was frequently on unfriendly terms with Hanna and McKinley, but, as Mr. Herbert Croly in his *Life of Mark Hanna* says, "though on certain formal occasions, Mr. Foraker was obliged to play the part of official praise-monger for the [McKinley] administration . . . yet it was his nature to play a lone hand." Again the same writer points out that "it speaks well for his [Foraker's] skill that he should have been able to hold his own against such a combination of popularity, effective power, and political ability as Mr. McKinley and Mr. Hanna eventually constituted."

Though Mr. Foraker resents the imputation that he was ever *obliged* to do anything for anybody, and with a certain show of truth maintains that the obligations generally rested upon the McKinley-Hanna combination, nevertheless, it certainly was to his interest at least to give the outward appearance of harmonizing with them, since to have done otherwise would have jeopardized party success. It is not intended to leave the impression that there were any fundamental differences between the principles of Foraker and those of the Hanna group, for there were none; but there was a keen rivalry between the two leaders, who played the game of politics according to different methods—Hanna by

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the use of money, patronage, and all the other expedients known to the machine boss, while Foraker made his appeal directly to the people, generally to their passions and prejudices rather than to their judgment or reason. Had there ever been an open break, it is quite probable that Foraker would have come off victor at least within the party, for the impassioned orator may sometimes beat the machine by making an appeal to the rank and file of the party over the head of the machine, but the machine usually gets even by secretly scratching his name on election day. That to some extent this was the case in 1889, Mr. Foraker himself testifies. Writing of the causes of his defeat in that year, he says: "The disaffection represented by Hanna and others who worked with him lost me a good many votes. There is no way of estimating just how many."

It was not until 1896 that Mr. Hanna and Mr. Foraker patched up their quarrel. By that time both had come to realize that they were interdependent. That such was the case is evidenced by the fact that Foraker used his influence to have one of his own followers, Governor Bushnell, appoint Hanna to the seat in the Senate vacated by John Sherman whom McKinley appointed secretary of state. Though Foraker admits that this was a bitter pill for him, nevertheless, considerations of "party harmony" finally induced him to swallow it. However, Mr. Foraker regards this transaction as "a disagreeable chapter in Ohio politics, not only because of the embarrassments caused by the plan agreed upon by the President and Mr. Hanna for putting Mr. Sherman in the cabinet and Mr. Hanna in the Senate, but also, because of the unfortunate results that followed so far as Mr. Sherman was concerned." Mr. Foraker seems to feel, as Mr. Sherman afterwards felt, that the whole business was simply a scheme to deprive the aged statesman of the office of senator in order to promote the wishes of Mark Hanna. Mr. Olcott, on the other hand, maintains that "the facts clearly indicate that no such scheme existed," though he does admit that "the selection of Mr. Sherman proved a mistake."

It is not the purpose of this essay to review the details of the McKinley administration. The outstanding facts are well known. His election received effective aid from the great business interests who trusted him not to interfere with their schemes of industrial consolidations and expansion. That their confidence was not misplaced, the history of the years 1897–1901 amply demonstrates. To maintain that the Spanish-American War was engineered by the business interests of the United States for the purpose of distracting the public's attention, which the political campaign of 1896 had focused in an alarming

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way (alarming to the business interests) on domestic problems, is no doubt an exaggeration of extreme socialistic writers. That the war and the problems of colonial adjustment and administration following it, however, did have that effect is hardly open to contradiction. Moreover, it is clear that the heads of the great corporations of the country seized the opportunity afforded by such distraction of public attention from domestic problems, to carry out titanic schemes of reorganization and combination with the attendant mulcting of the public by means of the well-known expedient of stock-watering. Since neither during the McKinley administration nor in the McKinley-Roosevelt administration, did the government make any serious attempts to check the formation of these giant monopolies and trusts, it is justifiable to conclude that America's great captains of industry made a wise and profitable investment when they contributed so freely to the Republican campaign-fund-in-1896-and-1900.

Of all this Mr. Olcott and Mr. Foraker see nothing, or seeing, regard their space as too valuable to be taken up with its discussion. It is true that Mr. Olcott assures us in one brief paragraph that one of the matters weighing heavily upon the mind of his hero in the closing year of his life was a plan for effective trust regulation. Whether the plan was ever matured, and if so, what was its nature, the author does not vouchsafe. The space thus denied to a discussion of the formation and regulation of monopolies, is given over to a narration, in thoroughly orthodox manner, of the political and diplomatic events which occurred during the four and a half years of McKinley's presidency. Of this narration, it is only fair to Mr. Olcott to say that he has told the story rather better that it has been told before in the same space. In the preparation of his chapters on the negotiations of peace with Spain and on intervention in China, the author has made a judicious use of some material not hitherto accessible, with the result that these two chapters are distinct contributions to historical knowledge. Also in Mr. Foraker's autobiography the reader will find many interesting side-lights on the political events of the day, in which the Senator was an active participant.

Mr. Olcott is of opinion that McKinley's statesmanship underwent a steady growth during the period of his presidency. His Buffalo speech, delivered on the day of the tragedy that ended his career, marks the acme of this development. In this address, the President revealed the metamorphosis which he had undergone since his first election. When he was inaugurated in 1897, he had been hailed as the man of one idea—the idea of high protection of American indus-

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tries from foreign competition. By 1901, he had come to realize that American industry was more than able to supply the home demands and consequently must reach out for foreign markets. Some of these new markets could be found in undeveloped regions of the world, and hence McKinley maintained that the government, in securing colonies, was serving the interests of business, and therefore was promoting the general welfare. Moreover, his speech reveals that he was beginning to find another use to which the tariff might be put besides its ancient function of protecting domestic industry. "If perchance some of our tariffs are no longer needed for revenue or to encourage and protect our industries at home, why," he inquired, "should they not be employed to extend and promote our markets abroad?" He then proceeded to demonstrate how the tariff might become a means of broadening our commercial relations by serving as the basis of reciprocity agreements with other nations. This use of the tariff had been pointed out by Blaine more than a decade before, and, on his urgent recommendation, reciprocity had been given a half-hearted trial in the Tariff Act of 1890; but not until 1900 did McKinley become an enthusiastic convert to the idea, and even then he was ahead of many of his fellow-statesmen.

Mr. Olcott informs us that if McKinley had lived he would have devoted his energy to negotiating, and pressing on the Senate for ratification, reciprocity treaties with as many of the nations as could be persuaded to make such arrangements with us. To what extent he might have been successful, it is hazardous to vouchsafe an opinion. At the time of his death, Americans were deeply absorbed in the fact of prosperity, and their attention was not then largely directed toward the business methods employed in the creation and distribution of the wealth which was the basis of prosperity. So long as his fellow-countrymen were so absorbed, it is possible that McKinley would have obtained their hearty approval of his reciprocity policy. But very soon a shifting of interest was to come. There was a tendency to turn from an inquiry into the possibility of extending our commercial relations and enlarging our industrial enterprises to an inquiry into how the very rich made their fortunes and the connection of government and politicians therewith. The nature of the articles to be found in the magazines reflect this shifting of interest. Indeed, the era of the "muckrakers" was at hand. The politician, who was not wise enough, or for any reason was unwilling to cater to the spirit of reform thus aroused, was in grave danger of being submerged; while he who was able to pronounce ringing discourses on the "square deal" and "social justice" was carried high on the waves of popular enthusiasm.

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No man was quicker to comprehend this shifting of popular interest than the then president, Mr. Roosevelt. Not only did he comprehend the movement and sympathize with it, but eventually he became its recognized leader. It was rather in this capacity than as leader of the traditional Republican party, that his later messages to Congress were written. In other public expressions as well, he sought to have it understood that the cause of the "square-dealers" was identical with the cause of the Republican party, and though in the minds of most people the two causes remained quite distinct, nevertheless, he did succeed in impressing the minds of some with the idea that only through the Republican party could real social justice be attained. It is not too much to say that many sincere men who voted for Mr. Taft in 1908 did so under the influence of this impression, and despite the prior claims of Mr. Bryan as the original exponent of the cause of the common people.

It was in pursuance of the policy of creating in the public mind the idea that the Republican party stood squarely for social justice that Mr. Roosevelt made such strenuous efforts to drive Mr. Foraker from public life. The quarrel had commenced in earnest when the Hepburn Rate Bill was under consideration by Congress in 1906. In Mr. Roosevelt's mind the unanimous support of this bill by the members of his party in Congress would go far to convince the country that the party was no longer merely "the advance agent of prosperity"—an appellation quite sufficient even for Mr. Roosevelt in 1896, 1900, and 1904—but had now become also the advance agent of social justice and the "square deal." Mr. Foraker testifies that it was an unwilling Senate—at least the Republican part of it—that passed this bill on May 18, 1906. But, willing or unwilling, none of his Republican colleagues dared to go against the wishes of the President, so great was his hold upon the country, and vote against the bill. Foraker alone, of those Republicans who were at heart opposed to the bill, had the courage of his convictions and voted as he believed.

It seems clear that the President reasoned that if the rate law was to stand, as he intended, as Exhibit A in the proof that the Republican party had become thoroughly consecrated to the cause of social justice and the "square deal," it was absolutely necessary to eliminate from leadership so conspicuous a Republican as the Ohio Senator, when he dared to oppose the bill. Hence it was determined by the President and his faithful Secretary of War, who was already being groomed for nomination by the party in 1908, that Foraker must not only be thwarted in his ambition for presidential honors, but must also be

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defeated for reëlection to the Senate. In vain did the Senator attempt to shift the issue and place the President on the defensive by challenging the authority and questioning the justice and motives of the latter in dismissing peremptorily a whole battalion of colored troops on the charge that when a few of their number were accused of "shooting up" the town of Brownsville, the others refused to testify against the alleged guilty parties. This move on the part of the Senator angered the President and served to strengthen his determination to insist upon Foraker's elimination.

Mr. Foraker acknowledges that his vote on the Hepburn Bill and his activity in taking up the cudgel on behalf of the colored soldiers, did make it possible for Mr. Roosevelt to destroy whatever chance he might otherwise have had of securing the Republican nomination for president in 1908. He denies, however, that the opposition of the President alone was sufficient to cause his defeat for reëlection to the Senate. He claims that it was the combination of such opposition with the bad effect of the Hearst exposure of his intimacy with Mr. Archbold of the Standard Oil Company, that caused the Ohio legislature to replace him with another Republican. In 1914 he failed in his attempt to obtain the nomination of his party in the direct primary. This last failure convinced him that his day in politics was past, and consequently he felt free to pen his *Notes of a Busy Life*.

The chief purpose of this autobiography seems to be to prove that in all his career in politics he was generally right and his adversaries usually wrong—a purpose that is quite frequently characteristic of the autobiography of a politician. Mr. Foraker is still unconvinced that there is any efficacy in such heralded panaceas as direct primaries, the initiative, referendum, recall, New Nationalism, New Freedom, or any of the other "fads" advocated by various of his later-day opponents. He has even found the uses of adversity sweet. Not only has it been his good fortune—and he admits that it gave him genuine delight—to welcome back to private life his two chief antagonists, two former presidents from his own party, but he finds that it is perfectly clear that time has "abundantly vindicated" all for which he was retired. He suffers no remorse, for in his concluding paragraph he informs us that as he looks back over the twelve years of his service in the Senate, he fails to find one important vote or speech that he would recall if it were in his power to do so. "There was not one that was not in the public interest, according to my best judgment, both then and now."

Thus it is apparent that Mr. Foraker wishes to persuade his readers and posterity that he deserves well of his countrymen. Also, enough

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has been said about Mr. Olcott's praise of the subject of his biography to justify one in concluding that he would rank McKinley among America's greatest statesmen. From these opinions expressed by Mr. Foraker and Mr. Olcott, the impartial student will find it necessary to dissent. While it is more or less dangerous to hazard an estimate of men, the chief part of whose careers lies well within the memory of the writer, nevertheless, it is perhaps not unjust to McKinley and Foraker to say of them that they were politicians somewhat above the average of their day in intelligence and ability. It is possible that in some respects McKinley deserves the title of statesman in addition to that of politician. But even he was primarily a *material* statesman. He was able and cautious, qualities which make for success, but not necessarily for greatness. He possessed a kindly disposition, was amiable, and wished everyone well; but his speeches and his conversations with his intimates, both of which are freely quoted by his biographer (aside from official state papers, McKinley has virtually no literary remains) fail to reveal that he ever pondered deep on the defects of human society and how such defects might be remedied or at least bettered by governmental action. His was a safe and conservative political creed—the creed of individualism and materialism, tempered with human kindness and charity. If, however, one is willing to grant the premise, which seems to have been assumed by both Foraker and McKinley, that the common welfare is best served when the government's policy is formulated in harmony with, and, one may almost say, in subservience to, the large business interests of the country, then, of course, both men deserve to rank high as statesmen.

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REVIEWS

Nationality in Modern History. By J. HOLLAND ROSE. NEW York, The Macmillan Company, 1916.—xi, 202 pp.

A collection of lectures on so timely a subject as "Nationality" from the pen of such an eminent scholar as Dr. Rose commands instant attention and respect, especially since the author states that the studies were begun several years ago and that most of his conclusions have not been modified by the present war. So far, there has appeared no connected scientific account of the growth of the all-important idea of nationality; and it is to this book, therefore, that we turn with high hope.

With many of the basic contentions of the author, thoughtful students will find themselves in full agreement. Due emphasis is laid upon the facts that only in recent times has Nationality become a conscious and definite movement; that its rise, foreshadowed by the Hundred Years' War between England and France and by the conflict in Spain between Christians and Mohammedans, first affected the countries of western Europe; that, apart from the writings of Machiavelli, where the patriotic instinct figures dimly, it was not treated by any writer until an anonymous Swiss brought out his *Von dem Nationalstolze* in 1758; that not until the fall of the French monarchy in August, 1792, did the national idea acquire a tremendous force.

> Previously it had been confused by the lingering sense of devotion to the King and Queen. But, after the overthrow of the monarchy the issue was clear. French democracy and nationality were ranged against the German invaders and royalism; and the French were compelled to put forth all their strength and energy [pages 29–30].

Nor will there be serious disagreement with the contention that this new-born patriotism was Janus-faced, now good, now evil. When it is good, Dr. Rose terms it "Nationality"; when it is evil, he styles it "Nationalism." And the birth of "Nationalism" synchronized almost exactly with the birth of conscious "Nationality." In fact, the battle of Valmy (1792)

> inaugurated the era of militant democracy. Subsequent events served to dull democracy and quicken militancy. The contrast between the political

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chaos at Paris and the conquering march of the French into Holland, Germany, and Italy, was so sharp as to become a grave danger to an impressionable people. Unable to achieve political liberty at home, they overpowered all opposition abroad; and thus the very men who had hailed the war of 1792 as a crusade on behalf of the liberty of enslaved peoples were soon drawn into methods inconsistent with their political principles [page 32].

While the author sketches boldly the subsequent national awakenings and risings in Germany and in Spain, he assigns the blame for the beginnings of national militarism ("nationalism"), not to the peoples in those countries nor to Napoleon nor to other despots, but directly to democracy. It was French democrats who imposed a system of compulsory military service in August, 1793, and developed it methodically in 1798.

These facts should be noted carefully; for they dispose of the assertions often made, that conscription was a device of the monarchs for the enslavement of their peoples. Far from that, conscription was a device of the most democratic government in the world for the expulsion of the armies of the monarchs. None of them dared to copy the democratic principle of national service, until Frederick William III of Prussia doubtfully adopted it as a desperate expedient for saving that humiliated State from utter ruin; and the Prussian army, when nationalized, played a very important part in the overthrow of Napoleon [pages 151–152].

As might be expected from the biographer of Napoleon, Dr. Rose is at his best in the sections dealing with the Revolutionary and Napoleonic eras. Besides, he has remarked the important contribution of Rousseau to the doctrine of nationality, and has studied specially and advantageously the noteworthy influence of the conversion of Fichte and Schiller from the ideals of cosmopolitanism to those of nationality. And his relatively extended treatment of the subsequent emotional theorizing of Mazzini is at once illuminating and justifiable. With appropriate brevity the author touches on nationality as exemplified in the well-known facts of the political unification of Italy and of Germany, in the growth of Pan-Slavism, in the story of the Third French Republic, and in the dismemberment of the Ottoman Empire. With a brevity less appropriate he discusses "the intolerant and aggressive instinct which has of late developed" in connection with nationality, here confining himself, curiously enough, to Germany and the Balkan States (particularly Bulgaria). Viewing both "nationality" and "nationalism" as but broad stepping-stones in the upward climb of civilization, Dr. Rose at the close of his volume excites the reviewer's liveliest admiration by such sentences as these:

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Nationalism shows signs of having exhausted its strength except among the most backward peoples. This war is the *reductio ad absurdum* of the movement in its recent narrow and intolerant form. . . . After the attainment of civic freedom and national solidarity, the national instinct, which strengthens with opposition and weakens after due satisfaction, ought to merge in the wider and nobler sentiment of human brotherhood in the attainment of which it is only a preparatory phase.

Unfortunately, it is necessary to notice that the present war is the *reductio ad absurdum* not only of nationalism but also of the justly earned reputation of many of the world's foremost historical scholars. Had Dr. Rose completed and delivered his lectures on Nationality before the outbreak of the struggle, they would undoubtedly have proved far more consistent in detail and more permanently valuable. As they now stand, they comprise within two hundred slender pages as many as thirty direct references to the present war—not that they should not deal at all with a matter of such supreme importance, but that they should so clearly mark off their author as a most partisan member of a belligerent nation. Serbia is always "gallant." Bulgaria is always "perfidious." The Turks are "ever faithless." Intolerant nationalism has been displayed only by the France of Napoleon I and by the Germany of William II. Militarism is an attribute only of Germany, not of Russia or France or Italy. British navalism has always been "defensive." In Dr. Rose's opinion, Great Britain possesses only the noblest attributes of nationality; she does not need to conquer her neighbors; she "attracts them by the charm of her culture" (page 142). And it was "under Lord Salisbury"—the Lord Salisbury who presided in Downing Street during the Boer War—that British policy "resumed its traditional rôle of protector of the small nationalities" (page 156)! Polish nationality is discussed at some length, especially in its relation to German nationality. Irish nationality is not even mentioned.

Although Dr. Rose convincingly maintains that modern nationality is not founded on "race," a fallacy which he exposes as mercilessly as the most radical anthropologist, nor necessarily on language nor on State nor on "an emanation of the World-Spirit," but merely on the popular *will* to be a *nation*, nevertheless he is always utilizing the littérateur's and patriot's characterizations of national peculiarities. Apparently, there *is* an Anglo-Saxon race, for it displays the qualities of "stubbornness" (page 12), "bluntness" (page 41), "tenacity" (page 93) and "attachment to the home and to individual liberty" (page 188). The Teutons, though "phlegmatic" (page 72), possess

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this same "attachment to the home and to individual liberty" (!); furthermore, they have been "torpid and diffident" (page 69)—in the eighteenth century. Between Slavs and Latins exists a strong tie of character, never properly perceived until Dr. Rose was moved to deal with the allies of his own country in the present war: both groups of peoples are more idealistic than the Teutons, superlatively patriotic, and quick to discern truth; both are inclined to "emotionalism" in politics. Coming down to particulars, the Russians are "intense and passionate" (page 94) and show "toughness and endurance," "firm comradeship," "tenacity" (page 93), "resignation and melancholy," and the "fatalism of the Asiatic" (page 94); the Little Russians are "more sensitive" (page 96); and the Bulgars—the "perfidious" Bulgars, corrupted in their naturally noble Slavic natures by the admixture of Turanian blood—are "stolid and unemotional" (page 104), "canny and suspicious" (page 107), "with a narrow view of things" (page 108), and "Tartar" (page 161). On the other hand, the French possess "demonstrativeness" (page 28), "perfervid imagination" (page 64), and "energy" (page 12): they are "sensitive" and "impressionable" (page 28). The Turks are "ever faithless" (page 100). All of which is supposed to illustrate the rhetorical query (page 17), "that every nation has a distinct personality, who can doubt?"

Zealous national partisanship is probably the real explanation of many other inconsistencies in Dr. Rose's book. On one page he insists upon the relatively recent development of nationality; on another he terms it "fundamental to human nature" (page 90). At times he seems to extol the political unification of Germany, alluding to "the beneficent influences that renewed and enriched the life of the German nation" (page 56), and urging us to "contrast the ridiculous Germany at which Heine mocked . . . with the great and powerful nation of today" (page 155). At other times he denounces it. "Contrast the cast-iron philosophy and brassy literature of modern Germany with that of the quaint and kindly age which witnessed the birth every year of some masterpiece ennobling the life of the little town. Which is the greater Germany? That of Goethe or that of William II?" (page 40). Sometimes Dr. Rose eulogizes nationality and its achievements to such an extent that he becomes rather the exemplar than the chronicler of nationalism. At another time, speaking of the "pigmy" German states of the eighteenth century, he confesses that

> it is open to question whether small States, the life of which is homely and the burdens light, do not favor the growth of the intellect far better than

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the enormous aggregations of the present, with their vast and diffuse aims, their complex problems, and the crushing load of taxation and military service [page 40].

The chief defect of the book seems to the reviewer to lie in Dr. Rose's uncertainty as to what nationality really is. Nationality, as we have seen, does not rest on race, language, casual political union, or Hegelianism. It does rest on "sentiment and will" (page 46). According to the author, Switzerland is a nation, while Austria is not; the Poles and the Jews are nationalities, while (presumably) the Irish and the Hindus are not. Aware, perhaps, of a certain confusion in exact, scientific terms, Dr. Rose in developing his idea of nationality has taken refuge—as most extreme nationalists sooner or later do—in an outpouring of the soul as mystical as it is eloquent.

> It is an instinct, and cannot be exactly defined; it is the recognition as kinsmen of those who were deemed strangers; it is the apotheosis of family feeling, and begets a resolve never again to separate; it leads to the founding of a polity on a natural basis, independent of a monarch or a State, though not in any sense hostile to them; it is more than a political contract; it is a union of hearts, once made, never unmade. These are the characteristics of Nationality in its highest form—a spiritual conception, unconquerable, indestructible. So soon as clans, tribes, or provinces catch the glow of this wider enthusiasm, they form a nation. . . . Nationality in its purest form corresponds to the time in life when the youth *finds himself* [page 147].

Has not Dr. Rose failed utterly to grasp the real inwardness of this emotion of Nationality? Had he started with the conception of Nationality as a *religious* emotion and then traced the formulation of its creeds and theologies, its devotional works, its sacraments, and its crusades, had he explained its amazing growth and general acceptance in modern times by reference to economic and social factors—the break-up of feudalism, the decline of city-states, the commercial revolution, the rise of national states, and the industrial revolution, he might have come much nearer to realizing our high hopes for a truly illuminating history of Nationality. And had he grasped the significant fact that our present-day economic organization throughout the world is far more cosmopolitan than national and that it is therefore in advance of our political organization, he might have supported with some facts what is now to him a mere article of faith—that the national instinct "ought to merge in the wider and nobler sentiment of human brotherhood in the attainment of which it is only a preparatory phase."

CARLTON HAYES.

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Prolegomena to History. By FREDERICK J. TEGGART. Berkeley, University of California Press, 1916.—133 pp.

Professor Teggart has brought together in this study a wealth of suggestive material bearing upon the conceptions of history and of the methods employed in its production. Most treatises on history deal with this central theme in a more or less casual way; Professor Teggart has covered the field exhaustively. His list of citations and bibliographical references make the little book an indispensable member of any reference library.

The method of presentation is clear, though the variety of views adduced is sometimes puzzling. After a general survey of the definitions of history, with especial reference to the problem as to whether it is a science or an art—a field in which one may waste much time—there is a chapter on "The Method of Science" which in crisp form, by way of quotations, develops the importance of the working hypothesis and the artistic process (the author does not use this term) of building up in the mind relationships similar to but not identical with those of nature. Then the method of history is discussed, again by way of quotations significant of the attitude of historians and critics. The originality of the author himself comes out in his treatment of the question of detachment, of objectivity, which the extreme "scientific" wing of historians have carried to the point of devitalizing the past. "The demand for 'impartiality' is just the unconscious recognition of the need of 'distance' in history-writing". The conclusion is that

> historiography is no mere colorless product of scholarship . . . Mommsen may present the picture of a distant past, but he speaks always with the voice of his own generation and gives utterance to the ideas and aspirations of his own community. The historian, far from being open to condemnation, is true to his calling when he follows his "natural impulses like the common run of men", for he does not write as a scholar but as the spokesman of a people.

This is not the native self-revelation of a *littérateur*, but the sober judgment of a scholar. It is reached after an exceptionally erudite analysis of all that has been said on the subject. The only thing for the historian to do is to read the book.

JAMES T. SHOTWELL.

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An Autobiography. By CHARLES FRANCIS ADAMS. Boston, Houghton Mifflin Company, 1916.—ix, 224 pp.

No one need be told that an autobiography of Charles Francis Adams is delightful reading. "Though in no way remarkable," he says of himself, "I was, and am still, individual." Probably no word better hits off the man; and in his case the style was the man. What characterizes the writing of Charles Francis Adams is precisely its marked individuality; his was not so much a finely wrought style, or one that achieved great distinction, as it was the straight-out expression of a positive, independent, and highly intelligent man who wrote, one suspects, very much as he talked. Wishing to describe the dreary Puritan Sunday, he says: "Then came the going to church. Lord! that going to church!" That is a good style because, to one who has ever felt the oppression of the Puritan Sunday, the ejaculation leaves nothing to be desired. But it is also a very individual style, because it sounds like Charles Francis Adams and not like any one else. The entire book has that individual, Charles-Francis-Adams tang, which is so inimitable, so delightful, and so refreshing.

But the book was sure to be interesting for what it said as well as for the manner of saying it. For many readers the chief interest will doubtless lie in the description of men and events on the eve of the Civil War. Mr. Adams was a good observer, and he had unusual advantages for observing men intimately, and events, as it were, from the inside. He accompanied Seward on his tour through the west; he was in Washington during the crucial days before and after the inauguration of Lincoln; and he kept a diary—(impossible to be an Adams and not keep a diary!). The result is that we have here the most vivid portraits, and some extremely keen analysis, of men prominent at the time, of Seward and Sumner particularly. I know of no formal history that leaves on the mind so vivid an impression of the blank uncertainty, the vain optimism alternating with hopeless despair, which prevailed in Washington during the winter of 1861.

All this is interesting, extremely so, and valuable too. But I find the book fascinating chiefly as an incomparable product of the Puritan mind and temperament: the self-revelation of a true child of New England who detested the Puritan temperament, wished to be emancipated from it, thought he was so perhaps, but could never quite bring it about.

He begins with an account of his education, a training imposed upon him by his father, a man with the "terrible New England con-

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science", an able but an uninteresting man "afflicted with the everlasting sense of work to be accomplished—so much to do, so little done!" Well, it was all wrong, this education. His father, with no feeling for nature, never encouraged him in outdoor life or in athletic activities. "This was educational error number one; and, before I get through, the list will be long." It is long. Everything that his father ever did to him was wrong; because, in the case of his father, "two hundred years of ancestral swaddling clothes could not be burst." The son, at least, you think, will burst them. He thinks so himself. We had to be brought up in the way we should go, he says, "for then we would not depart from it when we were old! Wouldn't we?" Yes, you think, there will be a terrible reaction. You read on, expecting the revelation of this free spirit, emancipated from the sense of duty, the terrible New-England conscience entirely cleaned out, taking experience joyously, as it comes, responding flexibly to every impulse of the *élan vital.*

Alas! Nothing of the sort. Nothing that was done to him was right. But it was not that nothing should have been done to him; only something different should have been done. The educational training which he deplores concerns him scarcely more than the educational training which he "ought" to have had, the "stimulus" which "I especially needed." And as a man, free to do as he likes, he is forever unsatisfied, never "equal to the occasion", never "awake to my opportunities," in short, as disgusted with what he did himself as with what his father had made him do. Did he enjoy himself in Europe? O, yes, "after a fashion"; but "that I failed, and failed woefully, to avail myself of my opportunities, goes without saying." He laments the fact that he never prepared parts of the family correspondence for publication, (and so do we!). He intended to do it; "but now whether I ever get to it is more than doubtful. *So much to do; so little done!*" (Italics mine.) And how does he think of this very autobiography, as he brings it to a close? It was worth while for the very joy of writing it, perhaps. Not at all; it "has been for me a decidedly profitable use of time. It has caused me to review, to weigh, and to measure."

The terrible New-England conscience was with him to the end, not to be got rid of by ceasing to go to church. But after all, who regrets that Charles Francis Adams was brought up in the way he should go? or that when he was old he did not depart from it?

CARL BECKER.

UNIVERSITY OF MINNESOTA.

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The Revolution in Virginia. By H. R. ECKENRODE. New York, Houghton Mifflin Company, 1916.—311 pp.

I suppose a member of the historian's guild should look with some suspicion on Professor Eckenrode's book, since it has no bibliography, few footnotes, and in general leaves the reader to do the best he can with the statement that "the present work is chiefly based on the original sources of information in the archives department of the Virginia State Library." Perhaps the book was intended to be read. It is in fact eminently readable; nothing profound or original in content, nothing really brilliant or distinguished in form, but a good straightforward narrative. A readable book and a scholarly one too; the author has studied his sources even if he hasn't paraded them.

The Revolution has generally been treated too exclusively as a movement for independence. It was this primarily, no doubt; but the conflict with England was accompanied, and greatly complicated and intensified, by a conflict in nearly every colony between the conservative and democratic elements, the former endeavoring to maintain their old privileges, the latter endeavoring to acquire new ones. This contest was particularly marked in Virginia. At its inception the revolutionary movement was led by the up-country leaders and the planter aristocracy; and so far as the latter were concerned it was the "determination of a proud, easy-going, liberty-loving community, conscious of its importance in America and of its small importance in English eyes, to maintain its old independence and increase it." The planters did not at first desire independence; and, when they found that nothing short of independence would serve their ends, they "wished the Revolution to end with separation from the British empire, without touching the framework of Colonial law and society. The progressives, on the other hand, sought to establish a government of equal rights, a democratic state". In other words, the planters of Virginia, like the conservatives in other colonies, were under the awkward necessity of endeavoring to maintain their rights against England and their privileges against the people in Virginia. It was extremely difficult to find an argument that would do for both; after instructing King George in the doctrine of the inalienable rights of man, it was not easy to convince the people of Virginia that the planters and the established church ought to be continued in the enjoyment of special privileges.

This dilemma, and the contest growing out of it, Professor Eckenrode has described very well. And he has described very well the

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partial success of the radicals between 1776 and 1779, and also the conservative reaction, beginning about 1779, and having its counterpart in other colonies, which was the prelude to the establishment of the Federal Constitution and the Federalist régime under Washington and Adams. From this point of view, the Revolution was the beginning of the democratization of American politics and society, a movement which is inseparably associated with the names of Jefferson, Jackson, Lincoln, and—shall we say Bryan, Roosevelt, or Wilson? Perhaps with all three.

CARL BECKER.

UNIVERSITY OF MINNESOTA.

The Press-Gang Afloat and Ashore. By J. R. HUTCHINSON. New York, E. P. Dutton and Company, 1914.—vii, 349 pp.

It is too much to expect that we shall ever have from one pen an adequate history of social England in the eighteenth century—one of the most dismal centuries that the common people of England ever endured. But in the last few years there has been accumulating a small library of books, based on first-hand or other authoritative sources, which reveal eighteenth-century English life in all its drabness. Among these books, Mr. J. R. Hutchinson's *The Press-Gang Afloat and Ashore* will take a foremost place. It is a contribution rather to the social history of England than to the history of the British navy. Only incidentally or allusively is there any mention of the achievements of the navy; and there is nowhere in Mr. Hutchinson's pages a discussion of British naval policies of the seventeenth and eighteenth centuries. Mr. Hutchinson's sole concern is the system by which the fleet was manned. He traces the pressing of men to a time as early as the reign of King John, and carries the history of the press-gang down to 1833, when a system which he describes as "conscription in its most cruel form," was finally abandoned in favor of the less expensive and more effective system of voluntary enlistment.

The system was at its worst between 1740 and the end of the Napoleonic wars in 1815; and it is of this period that Mr. Hutchinson writes with most detail. Every man who had "used the sea," unless he had a protection, or was too old, or was otherwise incapacitated, was liable to be pressed. He might be taken either when the merchant vessel in which he was serving was nearing her home port or after he had reached port. But in the long run, when the press was hot, and the press-gangs off the coast and on shore were alert and relentless in pur-

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suit, he was certain to be seized as the King's chattel, sent to Spithead or the Nore, and from these receiving ports transferred for an indefinite period to a ship of the royal navy.

The lot of the English seafaring man in the eighteenth century, either in the hands of the press-gang, or after he had been assigned to a ship of the fleet, was infinitely worse than that of a slave on a southern plantation at the same period. It is inconceivable that such an anti-social system of manning the fleet—a system based on rank injustice and cruelty and leaving so much social wreckage in its train—could have survived the reform of the representative system in 1832 or the extension of the newspaper press that followed the first reform of the House of Commons. Even as early as the reign of George II the law officers of the Crown frequently counseled the Admiralty that it was not expedient to take into the law courts cases in which responsible men resisted impressment.

The right of search grew out of the press-gang methods of manning the fleet; and in the eighteenth century, as Mr. Hutchinson shows, no men were keener to enforce this right than naval commanders, who saw in it a certain prospect of strengthening their crews. Forged protections were common as long as the system survived; and after the American Revolution of 1776–1783, American protections were a fruitful source of trouble to the Admiralty, because of the ease with which they were forged in New York.

> No class of protections, was so generally forged, so extensively bought and sold as the American. Practically every British seaman who made the run to an American port took the precaution during his sojourn in that land of liberty, to provide himself with spurious papers against his return to England, where he hoped by means of them to checkmate the press-gang.

The material on which Mr. Hutchinson has drawn is the statutes, the state papers, and for the eighteenth century, the admiralty archives, regulating officers' reports, captains' letters and admirals' despatches. While drawing less than perhaps he might have done on local newspapers of the last twenty-five years of the eighteenth century and the first ten years of the nineteenth, Mr. Hutchinson has made excellent use of the admiralty papers, and chiefly from them he has produced a remarkably informing contribution to English eighteenth-century social history.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

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The Influence of King Edward, and Essays on Other Subjects. By VISCOUNT ESHER. London, John Murray, 1915.—261 pp.

Eight review articles and an address before the United Service Institution are included in Viscount Esher's *The Influence of King Edward and Other Essays*. Several of the articles have lost interest in consequence of developments since they were written, and especially of developments resulting from the war. Permanent interest, however, attaches to the study of the character of King Edward VII, an essay which extends to nearly fifty pages. Its most distinctive feature is the sketch of the education of King Edward and of the environment in which his early life as Prince of Wales was passed. Viscount Esher, who had peculiarly good opportunities of becoming thoroughly acquainted with the late King, concedes that he was never a great reader; but shows that he was—what was quite as serviceable for a king—a great observer. In describing the King's influence as a constitutional sovereign, Viscount Esher recalls the fact that the British constitution withholds power from the sovereign; "but," he adds, "it clothes him with an influence, which in the hand of King Edward was highly potent; and, although exercised in a quite different fashion, was as powerful as that which was exercised throughout her long and glorious reign by Queen Victoria."

King Edward's methods were in direct contrast to those of Queen Victoria. In the Queen's long reign, the whole of the state business, with which she was so largely identified, was carried on by correspondence, and the Queen seldom saw her ministers. King Edward, on the other hand, was always accessible to his ministers; and far more than half the business transacted by the King was done orally in personal interviews. He enjoyed putting questions to his ministers. He liked also to state his own views, not in a formal document, but face to face with those whom the matter concerned; and Viscount Esher is confident that in saving time and minimizing friction this method was superior to that of the previous reign.

The address that Viscount Esher gave before the United Service Institution, March 20, 1912, was on the functions and potentialities of the Committee of Imperial Defence. The interest of this paper has been increased rather than diminished by the war, as it contains a fairly complete history of the committee; and from Viscount Esher's examination of its organization and work, it is possible to form an idea of the state of the preparedness of the British Empire in 1912. At that time, in addition to the consideration of the more obvious naval and military

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problems, attention had been given by the committee to such matters as aerial navigation, the strategical aspects of the Forth and Clyde, oversea transportation of troops, the treatment of aliens, press and postal censorship, trading with the enemy, wireless stations throughout the Empire, transport problems in the United Kingdom, and the distribution of food supplies. In this address Viscount Esher expressed his conviction that no British statesman could have federated the British Empire. But even in 1912 the menace of the German fleet was tending to this end—tending towards the federation which must inevitably be one of the earliest results of the war.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

Modern Germany and her Historians. By ANTOINE GUILLAND. London, Jarrold and Sons, 1915.—360 pp.

This is a remarkable book. Although the English translation bears a post-bellum date and gives no indication that this is not a first edition, the book appeared in French in 1900.

As long ago as that, Professor Guilland, apparently a student of that incomparable teacher, Gabriel Monod, had analyzed the work and appraised the influence of the nineteenth-century historians in Germany in a way which subsequent events have all too clearly justified. The book is therefore not one of that growing number of belated discoveries of Germany's intellectual feebleness which the war has produced. It is devoid of the spirit of nationalist partisanship. Indeed, since its main theme is the damage done by such partisanship not only to political ideals but to the scientific aims of history itself, it would have been a singularly patent absurdity if M. Guilland's own book had suffered from the defects which he attacks in his German predecessors. The book is written not as a defence of France and French historians against the German; it is not an apology for anything or anyone. The author takes up his task rather as a liberal in the truest sense of the word, a citizen of the republic of science and of letters, who deplores the fatal and narrow trend of most German historiography in the nineteenth century for its effect upon the Germans themselves, but remains unperturbed by its hostility to the "fickle and degenerate Gaul." In short the author exhibits just those qualities of the judicial temper and catholic outlook which are often missing in the historians with whom he deals.

The book concentrates upon five historians, Niebuhr, Ranke, Mommsen, Sybel and Treitschke; but it covers a wider scope than the chap-

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ter titles might seem to indicate. The theme is one now sufficiently familiar—the rôle of the historians in the formation of the national spirit and political union of Germany. But although the story has been told so frequently—especially with reference to Treitschke—that it is unnecessary now to elaborate or define it in a review, it has never been done so well or so thoroughly as here. In the introduction, Professor Guilland brings out keenly the significance of the battle of Jena as a starting point for the new movement which culminated in 1870, and of the work of Stein in both historiography and statecraft. The influence of Burke stands out here; and antagonism to the principles of the French Revolution furnishes fuel for the ardor with which the Prussian institutions, past as well as present, are upheld. The case of Ranke (who was much influenced by Burke) is of special interest. His two main principles of history—that each society or nation has its individuality, and that within the nation individuals play a great and often determining rôle—lend themselves to an interpretation of Hohenzollern Prussia which carries one far from that calm objectivity which alone saved Ranke himself from the bias of a Treitschke. But, even as it was, he felt that "the true destiny of Prussia is to be and to remain a military monarchy." The historians of antiquity contribute almost as directly as those of modern times to create the new ideals—Niebuhr by his portrayal of the natural growth of Roman institutions, Mommsen by his insistence upon the splendor of a disciplined empire, the capacity of Roman and German and the unspeakable baseness of the Celt!

Having shown, in the subsequent chapters, the close relation between the work of the modern historians and that of Bismarck, the volume closes with a somewhat prophetic query as to the ultimate value of such ideals. Referring to the evil effects of Bismarck's policy of controlling public opinion at home, and of the political corruption which is sheltered from attack by efficient manipulation, Professor Guilland says:

> If we consider that this policy had its warmest defenders in the recent Prussian historians, we are right in saying that they are the authors in the first place of this degeneracy of manners. By so acclaiming strokes of force and cunning, in spite of the moral varnish with which they have covered their theories, they have helped to pervert the public mind. As the philosopher Renouvier said admirably, "they have awakened and stimulated the dangerous taste of the past, ending in the fatal universal evolution, in the supremacy of history over reason, of deeds over rights, of force over justice." Through their historical theories they have been the propagators of the worst political maxims, for the refutation of which

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humanity already has shed seas of blood. They must be surprised after that with the results; they have worked for social democracy. In truth, nothing lasting is based upon deceit and lies; sooner or later that work comes back to one.

JAMES T. SHOTWELL.

Americanism: What It Is. By DAVID JAYNE HILL. New York, D. Appleton and Company, 1916.—xv, 280 pp.

The People's Government. By DAVID JAYNE HILL. New York, D. Appleton and Company, 1915.—xv, 287 pp.

In the preface to *Americanism* Dr. Hill objects to the attempt to seek progress "through what society as a whole can do for itself," because such an attempt forgets "that society is a purely abstract idea, possessing no inherent power either of initiative or of achievement" (page x). He thus warns us at the outset that danger lurks in the use of abstract ideas in political thinking. His Americanism is identified with what he terms individualism. He finds a contemporary reaction against "Americanism," based on the assumption that individualism is egoism. It is not that, he says. "On the contrary, it is the only solid foundation for our duty to respect the other man's rights" (page x).

A few abstracts will indicate Dr. Hill's message. He calls it an error to think "that anyone's will is law" and holds that "what constitutional government intended to do" was "to establish the principle that law is not a product of will, but a system of rules for the regulation of will, derived from the authority of reason" (page 103). He says that "a constitution is to a state what conscience is to human character" (page 138) and that the people of the United States, in enacting the Constitution, "standing in the place of the sovereign, and exercising sovereign power . . . freely and formally renounced the power to impose their personal arbitrary will upon the organs of government or upon one another" (page 55). That Dr. Hill, however unconsciously, moves on a higher plane than a dryly legal one is apparent from his recognition that the Constitution is subject to amendment. He feels, however, that it should not be amended lightly or unadvisedly. "The first method of attack" on our system of just laws and principles "is through the hasty alteration of the fundamental law itself" (page 56).

There are overwhelming proofs that we are at present passing through a

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crisis in which the great structure of liberty and justice erected by our fathers is being insidiously undermined; not in the interest of the people, of whose rights it is the only guarantee, but in the interest of private powers within the State, which, for purposes of their own, wish to dominate it and employ it as the instrument of their designs [page 82].

Our present peril seems to Dr. Hill the greater because "we freely admit that there are fewer purely personal motives for defending the work of the past than there are for initiating new and ill-considered schemes of public action" (page 93). He does not enter into a detailed refutation of the doctrines which he deems dangerous, as he would "if we were engaged in a polemic rather than a purely expository task" (page 107), but those who are guilty of the errors are on various pages referred to as demagogues, sophists and sycophants. The "natural enemies" who thus menace "Constitutionalism . . . include all those who, in any form whatever, desire to make the State their private servant, and through control of the public powers use it to serve their own personal class interests at the expense of others" (page 82). Thus one might infer that Dr. Hill is opposed to a protective tariff, a pension system, the grant of tax exemptions, patents and exclusive franchises, and to many other acts of legislation by which personal class interests have been served at the expense of others.

The burden of *The People's Government* is like that of *Americanism*. The people's government is seen to be not the people's government. "Authority does not primarily pertain in any sense to persons. It is not more an attribute of the people than it is of the prince" (page 8). This point of view is elaborated in a fashion likely to please the philosophical anarchist.

It would seem to be an axiom, that any mere aggregate of similar units cannot contain any qualities which no one of them contains. How, then, can a collection of mere private wills, considered as so many personal expressions of desire, or interest, or determination, possess rightful authority over any individual? If no one of them, regarded singly, possess such authority, all of them together do not possess it [page 116].

With flawless logic, Dr. Hill adds:

Certainly this will not be disputed by anyone who accepts the doctrine that the individual possesses "inalienable rights," whatever that may mean; for if such rights are "inalienable," no collection of persons, no matter how numerous, may justly take them away [pages 116–117].

Dr. Hill's thoughts would not merit such extensive notice but for

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the fact that the university and diplomatic positions which he has held may carry weight with many readers and lead them to suppose him an authority on our constitutional system. Those familiar with the work of Professor Burgess will easily discover that Dr. Hill is guilty of an inverted form of the failure to distinguish the state from the government. Professor Burgess has warned us against the assumption that the omnipotence of the state is any warrant for vesting omnipotence in the government. Dr. Hill leads the unwary reader to assume that because the American constitutional system sets limits to the power of the government, it therefore sets limits to the constitution-making authority which lies behind the government. This error is induced by Dr. Hill's use of ambiguous terms. He uses "right" without making clear whether he means legal right or moral right. He speaks of limitations on the power of popular majorities in such a way as to make no distinction between the action of such majorities in the task of legislation and in that of constitutional amendment.

> Whatever may be true in other countries and, therefore, taught as true in our country, there is one country in the world where, until the present at least, the individual possesses guarantees which no power—not even that of popular majorities—can take away. And this is not a theory or an inference; *it is the law* [page 128].

Dr. Hill is aware that he is not giving a correct historical picture. On this point he says that "since the historic State was originally a mere embodiment of force, it is not in the history of the State, but in the history of thought about the State, that we must seek the evidence that there are inherent rights" (page 124). But there is no similar disclaimer as to the legal aspect of his picture. He begins chapter iv by saying: "If, from the point of view of jurisprudence, there exists in human society no unlimited right of legislation . . ." (page 135), and the "if" seems to be an "if" of recapitulation, not of doubt. In an earlier chapter he says:

> We are here, of course, speaking only in the name of jurisprudence, which deals exclusively with rights and obligations; and superiority of force is not at all in question. All the power in the world cannot make wrong right. To say that the State may arbitrarily issue commandments, even at the behest of the people, and enforce them, regardless of individual rights, because it has the power to do so, is to abandon entirely the ground of juridical discussion, and pass without logical warrant from the domain of *right* to the domain of *might* [pages 117–118].

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There is evidence scattered throughout Dr. Hill's book which indicates that he may not mean what he says, that he may mean only that there are constitutional limitations on the power of legislatures and moral limitations on the power of those who frame constitutions. There are passages in which he seems to realize that he is talking about something ideal rather than something actual. But he repeatedly confuses the two and in many places warrants the inference that under our constitutional system law and morals are one.

> Authority, in any sense which a jurist can recognize, is not a quantity, it is a quality. It proceeds from a discrimination between what is right and what is wrong. . . . Authority, therefore, has its true source in the nature of intelligence, which discriminates between that which "ought" and that which "ought not" to be done [pages 78–79].

If these thoughts were put forth merely as precepts for legislators, they might not be wholly devoid of merit. But their purport is not thus restricted. They may easily be taken by the multitude as the basis of an ethical sanction for the violation of a law which is deemed immoral. The free-trader who by false entry evades his customs duties may have a sense of exaltation when he realizes that he has substituted obedience to morality for obedience to mere force. The enemies of our public school system who base their opposition on conceptions of morality and the truths of revealed religion may welcome Dr. Hill to their fellowship. By all who mix their morality with their discontent, capitalist and socialist alike, Dr. Hill may be hailed as a spiritual successor to Calhoun, the messiah to the individual that the Great Nullifier was to South Carolina. But, as an apostle of disobedience and disintegration, Dr. Hill must at least be credited with the merits of his defects. Calhoun's doctrine of the concurrent majority was the more dangerous because it was close-knit and clear. Dr. Hill's thesis of the subordination of legality to morality is fortunately so compounded of vagueness and contradiction that its practical menace to our national unity is not greatly to be feared.

That Dr. Hill suspects to what evils his doctrine might conduce may perhaps be inferred from his search for some impersonal criterion for distinguishing right from wrong. This is found in the "immanence" within man "of that which is *not* himself, but to which he constantly makes appeal to satisfy his judgments and opinions" (page 83), an "intuition" in which "there is no element of will, or interest, or sensibility . . . no element of personal determination," whose "whole purport is that something *is seen to be true*" (page 139). This

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something thus seen to be true is "that in any organized community of men there must be mutuality of obligation" (page 139). Mutuality of obligation is said to be the source from which all individual rights are derived, the legitimate source of the sovereignty of the state (page 135).

With mutuality of obligation as a divining rod, the author then discovers that the right to life, though inherent, may be forfeited; that the right to liberty may be limited, so that the liberty of one shall not interfere with the equal liberty of others. There must be no suppression of productive powers, nor enforced surrender of the results of their exercise. The distribution of wealth must be determined by free contract between the joint producers. To this end, monopoly, both of capital and of centrally-controlled labor, must be restrained. The totality of wealth does not rightfully belong to society, but to those who by their industry, enterprise and skill have produced it, or by their abstinence from consumption have kept it in existence. These are the somethings seen by Dr. Hill to be true, through an intuition in which there is no element of will or interest or sensibility, through the immanence within him of that which is not himself.

THOMAS REED POWELL.

Charles E. Hughes: The Statesman as shown in the Opinions of the Jurist. By WILLIAM L. RANSOM. New York, E. P. Dutton and Company, 1916.—xxiii, 353 pp.

The notion that judges in deciding cases are mere automatons pulling the lever that starts a legal principle into faultless, automatic action is rapidly waning. Too many cases are decided by a divided court to let us believe that the personal viewpoint of the judges is no factor in their decisions. Though there are still those who say that the bench should be recruited from men without opinions of their own on public questions, in most instances it will be found that the preachers of this doctrine find their ideal man of no opinions in some one who does not differ from themselves. The judge on the bench is necessarily a human being in the concrete, and as such differs from other human beings in habits of thought and in general outlook. It follows, then, that the work of individual judges presents an important field for critical study.

In writing of the work of Mr. Hughes as associate justice of the Supreme Court, Judge Ransom disclaims any purpose "to establish or disprove the qualifications of Mr. Hughes for the presidency" (page xvi) and tells us that "no opinion written or participated in by Mr.

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Hughes . . . should now [July 20, 1916] be looked upon by any one as reason for the giving or withholding of support in the political arena" (page xv). Yet he holds also that a man's views of constitutional power are an index of his statesmanship and that the electorate has "no reason for excluding Mr. Hughes's memorable opinions from its own available sources of information as to the manner of man he is and the kind of a president he would be likely to be" (page xvi). The author's disclaimer wins less ready acceptance than his opinion that what a man says and does on the bench is an index of the quality of his logic and his vision and thus of his fitness for any public service.

The author's estimate of Mr. Hughes as judge is that "he displayed a broad and sympathetic knowledge of human affairs" and that "that knowledge was his guidance, rather than any preconceptions of social, economic or political theory. . . . With hardly an exception, his opinions reveal a man who is looking at actualities and is facing forward" (page 11). He adds, however, that the work of Mr. Hughes "does not stand out in any way from the trend of policy and decision of the court as a whole" (page 13). He finds that Mr. Hughes dissented in only thirty cases during his five years and eight months of service, and that in only two of these cases was he alone in dissent. In the 150 decisions in which Mr. Hughes wrote the opinion, the court was unanimous in all but nine. We are not told to what extent there was difference of opinion in the cases in which Mr. Hughes concurred but did not write the opinion. But if Mr. Hughes deserves the praise which Judge Ransom gives him, it is not less to his credit that his colleagues were usually equal in merit.

Nevertheless, the distinctive qualities of Mr. Hughes can best be judged from his attitude in the cases where there was difference of opinion among the members of the court. Of such cases the most important relate to the subject of peonage, the interpretation and application of the anti-trust act, the interpretation of franchise grants and of the conception of freedom of contract. In Coppage *v.* Kansas, Mr. Hughes was with Mr. Justice Holmes and Mr. Justice Day in opposing the eighteenth-century doctrinaire view of liberty which permeated the majority opinion of Mr. Justice Pitney. His dissent in this case gives just cause for Judge Ransom's laudatory characterization of him. He saw that the liberty of every individual workingman by individual action to make a free bargain with his employer is under modern conditions an empty sham and that a statute which promotes collective bargaining tends to create a parity of actual freedom of bargaining power

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between buyers and sellers of personal service. In the argument on the constitutionality of the Oregon mininum-wage law, when the counsel against the state insisted that the regulation of hours of labor furnished no precedent for the regulation of wages because the amount of wages received had no relation to health or morals, Mr. Hughes interjected the pregnant question: "But suppose it has; suppose that this court finds that these evils *are* in consequence of wages paid in employment?" In Bailey *v.* Alabama, Mr. Hughes in the majority opinion brushed aside the theoretical separability of different statutes of Alabama and saw that their combined effect in actual operation was to place upon ignorant laborers the alternative of serving masters for a fixed term or of going to jail. In the Frank case, and other decisions on criminal and civil procedure, and in various cases involving an interpretation of statutes, Mr. Hughes also looked through form to substance. He shows himself neither a doctrinaire conservative nor a doctrinaire radical.

Whenever Mr. Hughes differed from his colleagues, he seems to the reviewer to have been their superior in that quality which we sometimes call horse-sense. He looked through phrases to facts. He formed judgments, not by the glaring light of some dogma couched in absolute terms, which blinds the eyes to some other dogma which would equally well support a contrary decision, but he analyzed and weighed competing considerations in their relation to the actual present-day conditions of life. His opinions will not become classics, like those of Holmes. They lack Holmes's imagination, compactness and charm of style. But so do most judicial opinions. Mr. Hughes seems less conscious of his intellectual processes and his legal philosophy than does Mr. Justice Holmes. But his judgments, though reached by more lumbering processes of thought and conveyed with less felicity of expression than those of his more brilliant colleague, are entitled to equal commendation for their practical wisdom.

The reader of Judge Ransom's book will be apt to give Mr. Hughes credit for much that is in reality the joint product of himself and his colleagues. But the author has warned us against this in his preface. He has not warned us, however, that perhaps his own sympathetic understanding of the legal philosophy of Holmes and of Pound has led him to attribute to Mr. Hughes a conscious appreciation of the spirit of the really constructive jurist which is more characteristic of the biographer than of his subject. This spirit animates all of Judge Ransom's writing. He quotes Von Holst to the effect that "the real essence of the Constitution, as it takes concrete shape in legislation, must grow

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and change with the advancing public and private life of the people." He endorses Dean Pound's advocacy of

> the movement for the adjustment of principles and doctrines to the human conditions they are to govern rather than assumed first principles, the movement for putting the human factor in the central place and relegating logic to its true position as an instrument.

His own phrasing of this attitude of mind is

> the belief that regulative legislation and governmental action should be based upon, and should from time to time be shaped according to, a thorough disclosure of the relevant social facts, rather than predetermined concepts of constitutional construction, economic theory or governmental polity.

But, most important of all, Judge Ransom shows by his detailed consideration of recent decisions that his quotations and his own language are not mere expressions of a pious wish, but are the only satisfactory explanation of the actual course of the evolution of judicial decision—that, as Holmes said many years ago, "the life of the law is not logic, but experience." Judge Ransom's book should be read not only for its portrayal of the work of Mr. Hughes and his colleagues but for the personal contribution of the author towards an illuminating philosophy of law.

Thomas Reed Powell.

The American Plan of Government. By Charles W. Bacon, assisted by Franklyn S. Morse. New York, G. P. Putnam's Sons, 1916.—xxi, 474 pp.

This volume seeks to describe the American constitutional system by quoting from judicial opinions significant extracts bearing upon the various sections of the Constitution. In the introduction by Mr. George Gordon Battle it is said that "no similar book is in existence." The method of treatment, however, closely resembles that employed by Mr. Watson in his treatise on the Constitution. The chief difference is that Mr. Watson considers the sections of the Constitution in the order in which they appear in that instrument, while Mr. Bacon groups them under the following topics: the organization of Congress, the powers of Congress; constitutional guarantees of private rights; the powers of the executive; jurisdiction and procedure of federal courts;

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the relations between the state and national government. Mr. Bacon also differs from Mr. Watson in that he usually states the facts of the cases from whose opinions he quotes. He does this, not only when the decision is based upon the constitutional clause under consideration, but in many instances where the decision is unrelated to that clause, and where, therefore, the facts of the case are of no significance. Mr. Bacon makes frequent references to Mr. Watson's treatise, and his selection of citations indicates that Mr. Watson's book may have guided him to a number of the cases from which he cites.

The limitations inherent in Mr. Bacon's method of exposition are perhaps most clearly apparent in his two chapters dealing with the preamble. Under the heading "We, the People," are given the facts of the Dred Scott case and a quotation from Taney's opinion. "In order to form a more perfect union" is explained by the facts of Texas *v.* White and an excerpt from Chase's opinion. "In order to establish justice" prompts a quotation from Chisholm *v.* Georgia to the effect that "this points, in a particular manner, to a judicial authority." "In order to promote the general welfare" is the peg on which is hung Brown *v.* Maryland, the only apparent reason being that Marshall's opinion in that case contains a paragraph about "the degraded state of commerce previous to the adoption of the Constitution." Throughout the book, the author's search seems to be for an apposite extract from an opinion, whether the case cited is in point or not. An example of this appears in the discussion explanatory of the clause "the Congress shall have power to lay and collect imposts." Here there is a statement of the facts in Woodruff *v.* Parham and an excerpt from the opinion which consists mainly of indirect quotation from Brown *v.* Maryland. Both of these cases involve prohibitions on the states rather than grants to Congress.

Inadequacies of treatment abound. The clauses of the 13th, 14th, and 15th amendments giving Congress power to legislate are explained only by a meager reference to Clyatt *v.* United States, which throws no light on the perplexing problem involved in the interpretation of that clause in the 14th and 15th amendments and considered in the Civil Rights Cases, United States *v.* Cruikshank and other important opinions rendered during the Reconstruction era. The due-process clause of the Fourteenth Amendment is dismissed in three pages (217–219) containing extracts from two opinions concerned with the problem of rate regulation, and in eight pages (262–269) dealing chiefly with criminal procedure. The provision that no state shall lay any imposts or duties on imports has no elucidation except a brief extract from the

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opinion in Gibbons *v.* Ogden. The subject of direct taxes is treated by quotations from the Springer and Pollock cases, with no mention of the Sixteenth Amendment. No reference to this amendment appears in the index, though the date of the preface is May, 1916, and consideration is given to the Seventeenth Amendment.

Positive errors are frequent. In explanation of the clause "no person shall be a representative" etc., the author refers to the case of Minor *v.* Happersett and says that the Supreme Court "decided in effect that no woman can sit in the House of Representatives." This case merely held that a state could deny to a woman the right to vote, without abridging her privileges or immunities as a citizen. On page 108 appears the statement that "the unlimited power of Congress over all business which crosses State lines extends even to the reversing of decisions of the Supreme Court." The authority cited in support of this strange doctrine is Pennsylvania *v.* Wheeling etc. Bridge Co., which merely decided that an obstruction to interstate commerce which was unlawful in the absence of Congressional permission might become lawful after the grant of such permission. Among other errors may be quoted the following.

> [Gibbons *v.* Ogden] is the basis of that long series of decrees which have given Congress *absolute power to regulate* the business of the United States [page 107].
>
> A divided court cannot render a final decision on any point [page 111].
>
> [The Judiciary Act of 1912] gave the District Courts power to hear and decide all suits to which the judicial power of the United States extends [page 147].
>
> The police power of the States is a limitation upon the powers of the United States. It is a right upon a right. It is, for example, the legal justification for the State prohibitory liquor laws, which often impair the obligation of a contract [page 224].

These instances of inadequacies and errors are characteristic rather than exceptional. Mr. Bacon has given a convenient guide to many important judicial utterances, but his book can be used with safety only by one already well grounded in the decisions interpreting the Constitution. One merit the work possesses. It shows no trace of any political or economic bias on the part of the author. Neither, however, does it indicate that political and economic doctrines have been factors influencing the judicial interpretation of the Constitution.

Thomas Reed Powell.

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History and Procedure of the House of Representatives. By DE ALVA STANWOOD ALEXANDER. Boston, Houghton Mifflin Company, 1916.—xv, 435 pp.

It has been said of a certain European language that the only way to learn it is to be born and bred in the country; and perhaps the only way to master the intricacies of procedure in the House of Representatives is to participate for a decade or two in the active business of legislation. Some veteran members of the House profess to know the rules—especially when they have the eight bulky volumes of Hinds's *Precedents* within easy reach. In doubtful cases they can discover the meaning of a rule by breaking it. But the layman, however anxious to follow the course of public affairs, is profoundly mystified. He looks in vain for light. Curiously there exists no compact popular treatise on the procedure of the House, no clear and simple description of the law-making process. No May or Redlich, no Lowell or Anson has illuminated this important field.

It cannot be said that Dr. Alexander has supplied the deficiency. He has been concerned more with past developments than with present methods, more with the days of Clay and Colfax than with the days of Cannon and Clark. The historical element, instead of being ancillary, predominates; and while it often serves a very useful purpose and helps to explain the nature of existing procedure, sometimes (partly because of the absence of orderly and systematic arrangement) it tends to produce confusion. Thus chapter xii, which is supposed to deal with "committees and their work," has practically nothing to say about the committee system as it stands today. It is all history, and history which is, occasionally, rather entertaining than apposite. The character of the narrative may be suggested by quoting the first sentence of successive paragraphs. "Reagan had left the House in 1861. . . . The revisers of the rules in 1880 did not approve Reagan's tactics. . . . To this Reagan vigorously dissented. . . . This action fanned the flames of jealousy. . . . Morrison was a radical tariff reformer. . . . But Morrison's courage was not broken." Throughout the book emphasis is laid upon personal conflicts, upon incidents and anecdotes; and in consequence the index is simply a catalogue of proper names, no solitary reference of any other kind appearing under some of the letters of the alphabet. The reader, having found nothing in chapter xii about the appointment of committees, can get no help from the index. He must read through the book; and unless he is wary and diligent, he may be misled by the opening statement of the fifth chapter which

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says: "The speaker's greatest power has its source in his authority to appoint committees." Where the author confines himself to an exposition of contemporary practice, as in the chapter on "the making of a law," the result is disappointing. It is no exaggeration to say that, to understand that chapter, one would first have to know how a law is made. At times there is an obscurity and incoherence of expression, a lack of sequence in the thought, which seems to proceed from too careful an attention to style.

But, whatever may be said in criticism, the book must be regarded as a highly useful contribution. If it fails to elucidate the difficult points in procedure, it does give a great deal of interesting information, both historical and contemporary, which has been brought together by painstaking research. In the matter of contested elections, for instance, Dr. Alexander shows that while in the beginning the House strove to assume a more or less judicial attitude, before the end of the eighteenth century, in view of the growing antagonism between Federalists and anti-Federalists, the majority had begun to consult its own advantage almost exclusively. "The decision of election cases," as Thomas B. Reed said, "invariably increases the party which organizes the House and appoints the committee on elections. Probably there is not an instance on record where the minority benefited." Down to 1907, in fact, the House had decided 382 contests, all but three of them in favor of the dominant party. One result has been the multiplication of contests—there are 12 or 15 after each election—and a corresponding waste of time. One-ninth of the first session of the fifty-first Congress was consumed in this way; and yet the outcome is almost invariably the same, a triumph of partisan interests. Dr. Alexander, concurring in the views of Speaker Reed, favors the adoption of the English practice, the reference of all election contests to the federal courts.

He manifests, in regard to controversial matters, a spirit which is at once critical and constructive. Combining the habits of a student with the experience of an active politician, he is neither limited by a narrow partisanship nor led away by attractive theories; and this capacity to form a balanced judgment is of particular value in measuring, for instance, the conflicting forces which will determine the future position of the speaker or the outcome of proposed reforms in regard to appropriations.

E. M. SAIT.

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The Instinct of Workmanship. By THORSTEIN VEBLEN. New York, The Macmillan Company, 1914.—ix, 355 pp.

Teleology is Veblen's specialty. Let any other scientist produce a generalization, however abstract, Veblen will extract a teleological element, an ulterior motive from it. He is like a skilled pathologist, competent to prove that all the world is suffering from his pet disease, however rare it may have seemed before. Such a pathologist usually ends by taking the disease himself, if it is communicable; and even if it is not, he is likely to reproduce the symptoms. So it has befallen Veblen. If in *The Instinct of Workmanship* he is not smitten with teleology, he does at any rate marvellously counterfeit the symptoms. What shall we say to the argument that the conception of God as a Creator, instead of a Most High King, is the product of handicraft experience? That handicraft experience is reponsible for the popularity, the existence even, of the principle of cause and effect? That the law of conservation of energy is derived from the practice of double entry book-keeping? One can only shake his head and mutter: "Too bad, too bad." It must be a case of teleology past recovery that produces symptoms so ominous as these.

What Veblen is bent on proving is that western civilization is plunging headlong toward the pit. The leading European races—at least the dolicho-blond race—are to be conceived of as late products of mutation. They are what they have always been, if we may apply forthwith to the evolution of man the tentative conclusions of DeVries on evolution among evening primroses. Thus there was no period when the dolicho-blond had to get on without domesticated animals, tools, and some form of social order. He was created—by mutation—into the possession of these good things. It follows by some not very obvious logic that the neolithic environment into which he was created was the one to which he would be best adapted. He must therefore be very ill adapted to the modern pecuniary, urban, machine-technology environment. His situation is essentially identical with that of the American in the Philippines or the Englishman in India, assaulted at once by excess of heat and of light, by tropical diseases and tropical customs. The conclusion would appear to be that either we must revert to the neolithic scheme of technology or we must evolve a new mutant type fitted to the conditions of the epoch of the machine. There is no hope even in adaptation through selection from among us. Veblen does not, however, draw this conclusion. He expects us to rest satisfied with his proof that we are marked for destruction.

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Where in this process does the instinct of workmanship come in? This is somewhat difficult to say. Indeed, it is not the easiest thing in the world to determine exactly what Veblen means by the instinct of workmanship; still less easy is it to make sure for oneself whether there is any such instinct. We are told to take this instinct "to signify a concurrence of several instinctive aptitudes each of which might or might not prove simple or irreducible when subjected to psychological or physiological analysis" (page 27).

> Its functional content is serviceability for the ends of life, whatever these ends may be. . . . So that this instinct may in some sense be said to be auxiliary to all the rest, to be concerned with the ways and means of life, rather than with any one given ulterior end [page 31].

This instinct is sometimes in abeyance, but, given a fair degree of mental ease, it springs forth to our service. Unfortunately we are always permitting it to become contaminated with other instincts, to the impairment of its efficiency. It ought to be free to face the materials it manipulates as brute fact. But in the periods of savagery and barbarism man perversely imputed anthropomorphic character to brute fact—a tendency everywhere injurious, but less serious in the domain of plant and animal breeding than in handicraft. This is the reason, according to Veblen, why neolithic man made so much greater progress in agriculture and stock-breeding than in the mechanic arts. The dolicho-blond mutant has always been relatively free from mysticism: this is why the people of western Europe have made greater mechanical progress than any other stock of men.

In the handicraft era of early modern times the instinct of workmanship gradually disentangled itself from anthropomorphic and mystical bias and built up its technology on a matter-of-fact basis. This, one infers, was the dolicho-blond's golden age. But his technology got away from him. It generated more and more complicated mechanisms, ownership of which was beyond the reach of the simple craftsman. Thus the advent of the capitalist entrepreneur became inevitable. Technology remained with the worker, but its usufruct and control passed into the hands of the capitalist. But the capitalist cares nothing for human serviceability. His concern is with money-making alone, and money is to be made out of disaster as well as out of service to humanity.

How does it stand now with the instinct of workmanship? It is obviously hanging in the air. The workman still has it, but whether he can use it lies in the discretion of the money kings. The instinct is

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ineradicable, to be sure, but deprived of its opportunity for natural functioning, it falls into abeyance. Other instincts, such as those leading to competitive expenditure and conspicuous waste, become dominant even among the workers. In the circumstances, how shall we survive?

Fortunately, conviction is not necessary to the enjoyment of Veblen. One may follow him through the trackless jungles of his anthropology, epistemology and universal history without necessarily getting lost. After all, there is something in all this. You cannot read this book without becoming aware of hosts of problems on which you would gladly have more light. And it goes without saying, you cannot read the book without conceiving an admiration for the sheer intellectual power of the author. Your admiration extends even to his style, baffling and shifty as it is. You gasp at his facility in handling polysyllabic and recondite words, as at the feats of a sword-swallower. And you pray that his style may not spread as an infection among the social philosophers to come.

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Civilization and Climate. By ELLSWORTH HUNTINGTON. New Haven, Yale University Press, 1915—xii, 333 pp.

From the days of Aristotle to those of Montesquieu and Buckle there have been men who believed that climate, if not the most important factor in determining the status of civilization, is at least one of the most important factors. Apart from expressing certain obvious relations between climate and civilization, these beliefs, for the most part, have merely attained the position of interesting hypotheses. The new science of geography, however, is making an earnest attempt to test both old and new hypotheses of this nature. In this attempt the author of *Civilization and Climate*, Mr. Ellsworth Huntington, has taken a prominent part. For two years he was a member of the Pumpelly expedition sent to Turkestan in 1903 by the Carnegie Institution of Washington. Later he joined the Yale Expedition to Palestine. Still later he conducted special investigations in the drier portions of North and Central America. In his earlier books, *The Pulse of Asia*, *Palestine and Its Transformation* and *The Climatic Factor*, Mr. Huntington has set forth many important theories derived from these investigations. Possibly the most important theory is what he terms the "pulsatory hypothesis." This hypothesis is that, although in general the past was moister than the present, changes in the amount of humidity have taken place irregularly in great waves. A shifting of the earth's climatic zones

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alternately towards and away from the equator—a view recently advocated by the German geologist Penck—is also included in the hypothesis. To these climatic changes are traceable, Mr. Huntington has maintained, the important shiftings in the location of civilization and pulsations in its development. For civilization, according to his theory, has always reached its fullest development in regions where climate has produced the maximum favorable effect upon human energy, and such regions have naturally shifted with the pulsation of climate.

The present volume deals with the same general theme. Its special purpose, however, differs from the earlier volumes in that here the attempt is not primarily to prove variability in climate but rather to demonstrate by inductive methods the correlation of the distribution of civilization today with the distribution of different types of climate. The earlier volumes merely cited strong presumptive evidence on this particular point; the present attempts proof. The first step in the process of proof is to determine by inductive methods just what constitutes the "best" or most stimulating climate. The second step is to discover the various degrees of energy to be expected in individuals living under such an optimum climate and under other specified types. The third is to construct a "map of climatic energy" showing the degrees of human energy to be expected from the effects of the known climatic conditions of the various regions of the earth. The fourth is to make a graded list of the various extant peoples of the world ranked according to their degree of civilization. The fifth is to compare a "map of civilization," based upon this list, with the "map of climatic energy." The similarity of the two maps is striking. If one couples with this fact the generalization that an equally high correlation between civilization and one or more non-climatic factors cannot be expected, the demonstration that climate is the essential factor in the production of civilization appears to be complete. Mr. Huntington, however, does not draw this conclusion without qualification. He is careful to admit explicitly that other factors play an important part in determining the status of civilization. The maps, in his opinion, indicate only that climate is as essential as any other factor.

The foregoing statements give an entirely inadequate notion of the wealth of detailed information and theories included in the book. Nevertheless they make plain the fact that in *Civilization and Climate* a highly significant attempt has been made to apply quantitative rather than qualitative methods to a difficult problem in the field of social causation. It is thus apparent that although in certain particulars the statistical procedure employed may be open to serious criticism, no one

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interested in the subject of applying scientific methods to problems in political and social science can afford to overlook the book. If not in all respects sound, it is brilliant, stimulating and provocative of constructive thinking.

A. A. TENNEY.

Die Russische Agrarreform. By W. D. PREYER. Jena, Gustav Fischer, 1914.—xiv, 415 pp.

Dr. Hourwich in his *Economics of the Russian Village* and Professor Simkhovitch in his *Feldgemeinschaft in Russland* have given us a picture of that unique survival of a by-gone age known as the *mir* or village commune. From these two works the western world learned also of the new economic forces that were undermining the ancient institution of communal land ownership. Professor Preyer takes up the thread where the two authors left it and concerns himself almost entirely with the great agrarian reform which is revolutionizing the system of peasant land-ownership in Russia and will, when it is completely carried out, make the *mir* a thing of the past. The book is of more than academic interest to this country, for we have a similar problem in the transition from tribal to industrial land-ownership among the American Indians; and the part played by the Peasants' Land Bank cannot fail to interest those who are concerned in the success of the recently established Farm Loan Board.

After reviewing the conditions created by the abolition of serfdom in 1861 and the economic differentiation of the peasantry which followed it, the author devotes a chapter to a description of the attitude of the different political parties toward the land-reform question at the time of the Revolution of 1905. With the exception of the Conservative party of landlords, all parties united in a demand for the expropriation of the lands owned by the crown and the landlords for the benefit of the peasantry, and the preservation of the *mir*, the chief point of difference between the Liberals and the Socialists being that the former wanted the landlords to be compensated for their land, while the Socialists advocated confiscation.

It was the late Stolypin's wanton disregard of public opinion that directed the revolutionary land reform along entirely different channels. His policy was prompted by a desire to create a conservative class of peasant land-owners. The author tells us how Stolypin accomplished his end by promulgating the measure as a Czar's ukase in 1906; how he dissolved the second Duma when it refused to sanction the uncon-

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stitutional act and how by a bold *coup d' état* he disfranchised a great body of voters and so changed the electoral law as to elect a more conservative and more complaisant (third) Duma which adopted his bill in June 1910, after spending two and a half years in perfecting it with the aid of experts.

The mere enactment of the law does not suffice, of course, to turn a commune into a body of independent land-owners and the description of the law itself and of its administrative realization fills the greater part of the book. The author describes the huge machine created for carrying out the reform. It included the formation of a Central Commission of high government officials at Petrograd, of a Provincial Commission for each province, consisting of eight appointed officials and two elected, one nobleman and one peasant, and of local commissions, one for each county, composed of twelve members of whom one-third is appointed by the government, one-third is elected by the local zemstvo, and one-third, by the peasants.

The legal, economic and engineering work required in the complete re-arrangement of thousands of villages and millions of peasants' holdings is stupendous. Some conception of the magnitude of the task is gained from a few figures cited by the author. It is to be noted that Stolypin put the ukase in effect immediately upon its promulgation so that it was in effect for three and one-half years before being enacted by the Duma in perfected form. In the first years, 1906–1912, there were created 47 provincial commissions and 463 county commissions employing over 5000 experts in 1910. Some twenty million acres of land were surveyed and detailed plans worked out for their parcellation among nearly one million peasant families living in over 49,000 village communes. The work of parcellation is not merely physical. It calls for the appraisal of every strip of the scattered holdings of each peasant and their consolidation into one as nearly equivalent piece of land as possible, the difference in value being paid in money. Entire villages are broken up, and so far as possible the American type of isolated farms is introduced. This involves the physical demolition of villages, the construction of new houses, the building of new roads, the digging of wells, the fencing of farms etc. Literally, the face of the country is being made over. Last, but not least, the government, being greatly interested in the success of the reform, is attempting to make radical changes in obsolete methods of cultivation by creating thousands of demonstration farms and agricultural experiment stations in coöperation with the local zemstvos.

To increase the area of peasant lands, the government is conducting a

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gigantic land-buying operation through the Noblemen's Land Bank and is reselling the land to the peasants through the Peasants' Bank. In five years (1906–1910) following the inauguration of the reform the Peasants' Bank purchased over fifteen million acres of land from noblemen, of which it resold nearly one-half to peasants on easy payments, extending over a period of thirty-four and one-half years and more, besides loaning over 447,000,000 rubles to peasants on mortgages which enabled them to buy direct from landlords nearly eleven million acres additional land, the repayment of the mortgages being extended over a period of from thirteen to twenty-eight years.

In view of the enormous amount of work which the carrying-out of the reform requires, it is far from completed. But enough has already been accomplished to mark it as the boldest step and biggest economic measure ever conceived and carried out by a government. Its final realization and the epoch-making consequences it is bound to bring in its train in the largest agricultural country in the world will well bear watching.

N. I. STONE.

NEW YORK CITY.

The Development of Transportation in Modern England. By W. T. JACKMAN. Cambridge, at the University Press, 1916—Two volumes, xv, vii, 820 pp.

Even from the Pitt Press at Cambridge—the press of the University—it must be quite a long time since there was issued a book on history or political science so carefully and generously documented as Mr. Jackman's study of the development of transportation in modern England. The pages which carry the text number 665; but of this total number of pages one third is occupied with footnotes, mostly amplifying the text. The appendices comprise 84 pages; and the closely printed bibliography extends to 62 pages. A framework on these spacious lines—footnotes, appendices, bibliography and an ample index—suggests a comprehensive and exhaustive treatment of the subject; and Mr. Jackman's treatment—it may be said at once—is fully in keeping with the framework of his book.

Neither Scotland nor Ireland is dealt with by Mr. Jackman. He is concerned solely with the development of transportation in England. But his conception of modern England is not narrow or restricted; for what may be described as the main story of the book begins at the close of the fifteenth century, and the story is carried down, always with much detail, to 1850, by which year there had been many amal-

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gamations of English railways; many canals had been absorbed by railway companies; and, moreover, the railway map of England had, as regards trunk lines, taken on much the form that it presented when the great war closed one era in British political, economic and social history, and opened the first chapter of a new era.

Much transport history has been made in England since 1850. The history of several of the great London terminal stations—St. Pancras, Charing Cross, Cannon Street, and the terminus of the Great Central in Marylebone—all fall within the years from 1850 to 1914. So does the history of the old and sulphurous underground railways and of the newer tube railways in London, and of London suburban travel, and also the history of the organization of the Manchester Ship Canal Company, the promotion of the company's bill in Parliament, the construction of the canal from Eastham on the estuary of the Mersey to Manchester, and the success which in the last ten years has attended the largest canal undertaking in England.

London railways and London termini would require a volume to themselves. So would an adequate history of the Manchester Ship Canal from 1880 to 1914; and Mr. Jackman is concerned with much more than the history of canals and railways. In these two volumes he has written the history (1) of the highways of the pre-turnpike era; (2) of the roads of the era of the turnpike trust; (3) of the improvements that were made in navigable rivers before any canals were constructed; (4) of the era of canals; as well as (5) the history of tramways and railways from 1655 to 1850.

In these informing and always readable pages Mr. Jackman has also written (1) of the attitude of Parliament to all these changes in transport, and to all these developments in transport facilities; (2) of the attitude of the land-owning classes towards the introduction of the turnpike trusts, river improvements, canals and railways; (3) of the attitude of the vested interests towards the introduction of canals and railways; and (4) of some of the economic and social changes that came in the train of improved river navigation, and better roads and canals and railways.

Despite the fact that Mr. Jackman brings his history down only to 1850 it is the most complete and exhaustive history of transport in England that has yet been published. It is much more than a history of transport. It is a contribution of much permanent value to the history of the making of modern England. The arrangement of the book is good. The chapters are of fairly even value. Those likely to be of most service are the chapters covering the history of canals and

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railways, which are particularly detailed, and bring to light a great deal of material long hidden away and practically inaccessible in newspaper files, and in manuscript, in contemporary tracts and monographs.

Parliament comes into more prominence in the canal and railway era than in the days of the turnpike and of improved river navigation. There was much more contention over the promotion of canals and railways than over bills for improving navigable rivers, and for establishing turnpike trusts. In this legislation—bills for canals and railways—the power of the governing classes could be exercised; and the way in which the territorial aristocracy exercised its influence to exploit the promoters of canals and railways, especially of railways, is brought out more clearly in Mr. Jackman's pages than in any other general history of railways, or in any history of the governing class of England that has yet been attempted.

Librarians and students of English history and political science, it should be added, will find Mr. Jackman's bibliography with its twelve or thirteen hundred entries, of much practical usefulness as regards many aspects of English history that seem to stand quite outside such subjects as Roman roads, highways, turnpike roads, river navigation, canals and railways.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

Citizens in Industry. By CHARLES RICHMOND HENDERSON. New York, D. Appleton and Company, 1915.—xix, 342 pp.

The task which Professor Henderson set for himself in this book—the last undertaken before his death—is the exceedingly useful one of describing and interpreting the "welfare" movement. He suggests a definition of welfare work which includes all the voluntary activities of employers for the betterment of employees, but disregards both those prescribed by law and those strictly essential to the conduct of the business such as "company" houses and stores where private accommodations are unavailable. The number and variety of things which employers are doing for their workmen, independently of either legal or economic compulsion, is surprisingly great. This book not merely describes what is being done, but places the development of the welfare movement in its proper position historically and discusses fully and ably its peculiar value and its limitations.

Briefly, Professor Henderson's position is that welfare and betterment work marks merely a transitional stage. What is now being done on the

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basis of private philanthropy is destined to be transferred presently to the more dignified plane of social legislation. It is the function of the intelligent and socially-minded business man to determine by experiment what it is wise to crystallize into law, and constantly to supplement the necessarily crude administration of the law. "The best service of a vigorous and inventive manager," says the author, "is to set the pace for the governments." Professor Henderson has a high opinion of the importance of such work. In it he finds hope for the solution of some of the gravest problems of our industrial life. With the factories managed, as he believes they soon will be, by men thoroughly trained in economics and social politics by the schools of engineering and business, great advances may be expected because of the knowledge on the part of the managers of the forces with which they are dealing and because of their increased "ability to get on with the workman on a basis of humanity and justice."

The book opens with a survey of "the universal and permanent reasons for promoting individual efficiency", after which it turns to a discussion of the particular methods used in welfare work—measures to promote health and safety, to stimulate efficiency by profit-sharing and other economic incentives, to better home conditions and to supply educational, cultural, and religious opportunities. Although occasionally methods are described in detail, for the most part the treatment is general, the author choosing to point out the peculiar advantages and disadvantages of types of activities rather than to present exhaustive expositions of the plans used in particular establishments. However, the way is made plain for a detailed and exhaustive study of plans used in particular plants, for, in appendices, are given both an extensive bibliography and a long list of business houses prominently identified with the welfare movement here and abroad. It is to be hoped that some one will soon take up the study of the welfare movement at the point where Professor Henderson has left it and give us the details which he has omitted.

Professor Henderson's book is a comforting one to read. It not only reveals the fact that an astonishingly large amount of welfare work is being done, but it also carries to the reader the conviction that such work, far from being a mere "sop thrown to labor," holds an important place in the evolution toward a more satisfactory distribution of wealth.

ROBERT MURRAY HAIG.

COLUMBIA UNIVERSITY.

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Scientific Management and Labor. By ROBERT FRANKLIN HOXIE. New York, D. Appleton and Company, 1915.—x, 302 pp.

It is generally recognized that in the United States we do not take our investigating commissions very seriously. The barrenness of immediate results from their activities, however, has come to be condoned somewhat in the minds of economists, because of the opportunity they afford of making scientific investigations—investigations whose effects may be remote and indirect, it is true, but scarcely less valuable on that account. Much was anticipated but little was realized in either of these directions from the activities of the Federal Commission on Industrial Relations. But at length this book has appeared which, while it bears some evidences of unsatisfactory conditions accompanying its production, is a real contribution in a field where some reliable information was badly needed.

When Professor Hoxie was asked to assume direction of the investigation of the relationships between labor and scientific management, he first made a survey of the literature of the subject and tabulated the claims of the two camps. He found not less than 215 "vital points at issue" which he made the principal basis for the preparation of an exceedingly elaborate questionnaire. This material is given in appendices which occupy more than one-half of the book.

Accompanied by special representatives of labor and of scientific management, Professor Hoxie next made examinations of some thirty-five "scientifically managed" shops. The facts in regard to labor conditions gathered in these visits are presented in a section of about one hundred pages and constitute the most important part of the report.

Little remains of the labor claims of scientific management after Professor Hoxie has dealt with them. He reports that there is no general adherence to the order of installation laid down by Taylor, the eagerness for immediate results operating to preclude this. Relatively few shops use "functional foremen," with the result that the "individual treatment" of the workmen is absent. No special methods of selecting workmen are usually employed. The instruction and training of the workmen are very narrow and inadequate. The system of "time study" and "task-setting" is not really scientific but, on the contrary, the methods and results "are the special report of individual judgment and opinion" (page 40). The special wage systems are found to be lacking in important particulars and to be subject to grave abuses. No effective guarantees are offered against over-exertion and exhaustion. The opportunities for promotion are greatly exaggerated. Finally, sci-

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entific management in practice is found to be essentially undemocratic and to contain elements which tend to weaken the organizations of the workmen.

There is a very suggestive discussion of the causes of the shortcomings of the system. That part which deals with the economic training of the experts and employers will be read with particular interest by those who have come into intimate contact with the literature of the subject. The cocksureness with which "laws" of wages and "solutions" of the labor problem are arrived at by those who are profoundly ignorant of the social sciences is one of the causes of the disfavor with which scientific management is viewed by many economists.

A measure of criticism may be made of Professor Hoxie's book on two grounds; first, that the nature of the plants selected for examination appears to be unsatisfactory, and second, that the general plan of presentation gives an unfair impression. Professor Hoxie is only partly responsible for either. At the very beginning the principle is laid down that scientific management must be known by its fruits and not by its claims—which is entirely right and proper. "Scientific management, in relation to labor, must be judged," the author says, "mainly by what it proves to be in actual operation" (page 4–5). He then cites Taylor's contention that scientific management must be entirely installed before its effects can be fairly judged and that, if any of its principles is violated, scientific management ceases to exist. To this view Professor Hoxie objects on the ground that it "would lead to endless quibbling". He insists that "it would be just as true to say that the church and state rest on certain fundamental principles, and that if any of these is violated in practice, church and state cease to exist" (page 5). This is true, however, only within limitations, for Professor Hoxie is still under the necessity of making sure that the plants whose fruit he is judging are essentially of the scientific-management type and not ordinary plants to which a mere twig or two of scientific management has been grafted. Although the shops visited are said to have been designated as representative, it is difficult to believe, after reading the account of the conditions in the shops, that the adherents of the strict "Taylor" school would recognize them as even faintly resembling purely scientific-management shops.

The general arrangement of the book, moreover, militates to the disadvantage of the scientific-management side of the controversy. The treatment consists, in the main, of an examination of the "labor claims" of scientific management. Among them are included those of the strictest of the "Taylorites," in spite of the fact that many plants

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of which they would not approve were accepted for the tests. The result is that claim after claim is shown to be "unfounded" and the impression is given that the merits of the case are with the labor side. Had the labor "claims" been treated in a similar manner, they would probably have yielded a similarly depressing series of negative results. It is understood that circumstances beyond the author's control impelled the immediate publication of the material in an incomplete form. That Professor Hoxie appreciated that the arrangement was not entirely satisfactory is shown by the fact that in his preface he promised a discussion of the "labor claims" sometime in the future—a promise which, owing to his untimely death, will never be fulfilled.

ROBERT MURRAY HAIG.

COLUMBIA UNIVERSITY.

The Single Tax Movement in the United States. By ARTHUR NICHOLS YOUNG. Princeton, Princeton University Press, 1916.—x, 340 pp.

In this book Dr. Young gives a full, connected and satisfactory account of the single-tax movement in this country. There has been no lack of expositions of the philosophy of Henry George or of attempts to refute it. There are good biographies of George and a number of studies of special problems involved in the application of his principles. But the student of the single tax as a movement—of its successes and failures and of its place in the political and economic life of the country—has hitherto found it necessary to resort to a very voluminous and scattered literature. Moreover, his understanding would even then be unclear without the illuminating recital of much unwritten history by the lips of those actually concerned in the happenings. Dr. Young has gone through the masses of material, has spent many hours listening to the stories of the veterans and has condensed it all into a book which can be read in a few evenings; yet he has succeeded, withal, in imbuing his volume with much of the interest of the original documents. His book is always readable and is often absorbingly interesting.

The study begins with a consideration of George's claims to originality, in the course of which the author discusses briefly but adequately the various "anticipations" of the single tax. Next he describes the economic conditions surrounding George while he was formulating his ideas, and points out their effect upon his philosophy. Then begins a detailed treatment of the single-tax movement proper, starting with the publication of *Progress and Poverty* and bringing the account down

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to such recent events as the unfavorable report of the Committee on Taxation of the city of New York. The student will turn, in the future, to Dr. Young's book for authentic information on such topics as the political campaigns for single-tax measures in the various states, the history of the single-tax "communities" and the activities of the Joseph Fels Commissson.

Throughout the volume Dr. Young maintains an attitude of deep respect for Henry George and his ideas. Indeed this feeling of sympathy and tenderness is carried to a point where it is likely to be mistaken by some for a stronger emotion. But this has had at least one fortunate result: the book has been given a very cordial reception by the single-taxers. One single-tax periodical, in the course of a laudatory review, has gone so far as to remark, naïvely, that the book is "surprisingly accurate." It is a pleasant and significant change when the single-tax journals insult economists unconsciously rather than with malice aforethought. Of late there have been evidences of a rapid growth of a spirit of tolerance among the younger single-taxers, a willingness to refrain from fanaticism in the support of their claims. On the other hand, there has been a strong drift of sentiment among the members of the present generation of economists toward a belief in the justice and expediency of the special taxation of land. This book should strengthen both tendencies and assist materially in bringing about a better understanding between antagonists whose relations in the past have been decidedly hectic. Such a result would mean much to the movement for tax reform in this country.

ROBERT MURRAY HAIG.

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BOOK NOTES

The English translation of Gide and Rist's *History of Economic Doctrines* (Boston, D. C. Heath and Company; xxiii, 672 pp.) has been made from the second edition by Mr. R. Richards of the University College of North Wales, under the direction of the late Professor William Smart. Although the book begins only with the Physiocrats —thus neglecting entirely the rich economic literature of the seventeenth century and the first half of the eighteenth—it will no doubt soon take the place in English that it has achieved for itself both in the original French and in the German translation, as distinctly the ablest and most interesting history of economics in existence. Its French origin and predilections are naturally visible throughout, but it tries to be fairly comprehensive and pays considerable attention to German literature. The American writers fare less well. A few pages each are devoted to Walker and Clark; the other writers referred to several times in the notes are Fisher, Patten, and Seligman. Carver, Fetter, and Seager receive one reference each and no mention at all is made of Taussig, Davenport, Moore or Adams. The misprints of English names that used to mar French books are very rare. We have noticed only one (page 349), where MacWickar is mentioned.

The scientific preparedness which is so distinctive a mark of the Teutonic nations is again in evidence in the most recent work on the probable future and closer economic relations between Germany and its allies, *Die wirtschaftliche Annäherung zwischen dem Deutschen Reiche und seinen Verbündeten herausgegeben im Auftrage des Vereins für Socialpolitik*, (München und Leipzig, Duncker und Humblot, 1916; xiv, 403 pp.; x, 496 pp.). The work is published by the Union for Social Politics and is edited by Professor Heinrich Herkner of Berlin. In the first volume we find valuable and interesting discussions on the relations between Germany and Austria-Hungary by such prominent economists as Spiethoff of Prague, Schumacher of Bonn, Knapp of Strassburg, and Ballod of Berlin, taking up the problems of preferential tariffs and various sides of agricultural production. In the second volume we find articles by Eulenburg of Leipzig, Schiff of Vienna, and Von der Leyen of Berlin, on the industrial, labor, and transportation relations. Finally, there is a series of articles on the possible economic relations of the future between Germany and Turkey,

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and between Rumania and the Central Powers. All the contributors seem to be convinced of the fact that a serious economic struggle is impending after the resumption of peace and that Germany's salvation lies in the direction of a close union with the other Central European states.

Some twelve years ago there appeared the first volume of a three-volume work on economics from the Catholic point of view by Father Heinrich Pesch. The remaining volumes, together with the second edition of the first volume, have now been published under the same title as the original work, *Lehrbuch der Nationalökonomie* (Freiburg im Breisgau, Herdersche Verlagshandlung; volume i, 2d ed., 1914, xii, 580 pp.; volume ii, 1909, x, 808 pp.; volume iii, 1913, xi, 946 pp.). The work has several merits. It is written in a clear and fluent style. It discloses a wide acquaintance with modern economic literature, including also the American. It is not extreme in any of its conclusions and it is marked by general sobriety of judgment. While there is nothing especially new in the work for American readers, it will form a very convenient lexicon of both theoretical and practical economic problems regarded primarily from the social point of view.

The aim of the Cambridge industrial and commercial series, of which Mr. George F. Bosworth's *Ships, Shipping and Fishing* (Cambridge, at the University Press, 1915; 86 pp.) is the first issue, is to familiarize the school children of England with the industrial and commercial history of their country, to enable them to realize the progress of the United Kingdom in industry and commerce and "the responsibilities borne by the citizens of the first of all nations." It was an excellent idea to begin the series with a book on ships and shipping. The story of the evolution of ocean carriers and of the royal navy, accompanied as it is in Mr. Bosworth's primer by the story of the Cinque Ports, of the port of London and the other great ports of the United Kingdom, will enable a prompt test to be made of the general plan of the series; for if the interest and romance of ships and ports as unfolded by Mr. Bosworth does not at once appeal to school children it is not much use attempting to interest them in books on mining and manufacturing. Mr. Bosworth's book has this interest for educationalists in this country. It is an admirable example of the best kind of writing that is now being done for school children in England.

Mr. J. C. Stamp's *British Incomes and Property* (London, P. S. King and Son, Ltd., 1916.; xvi, 537 pp.) is a book embodying an enormous amount of painstaking parliamentary, legal and statistical research—especially statistical—and unquestionably it will be of much practical

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value to the limited constituency for which it has been compiled. It is intended chiefly for students of economic and social progress in Great Britain, who in their work draw on the statistics of income tax since this tax was first levied in Great Britain in 1799. Statistics of income tax form quite a large portion of the volume. Accompanying these statistical tables there is much information for guidance in the use of the official statistics, and also much data of wider interest concerning assessments under the several schedules of the income-tax laws. Mr. Stamp is of the staff of the Inland Revenue Department, which is charged with the duty of collecting the income tax and compiling income-tax statistics; and while he distinctly states that he has reproduced no statistics that have not already been published in government reports, and has drawn on no sources that are not available to all investigators, it may be suggested that his book could scarcely have been compiled by a man less familiar with the intricate subject that he has the good fortune to be. One remarkable fact is quite incidentally stated by Mr. Stamp. For many years the life of the British income tax hung upon a slender thread. This is no revelation to students of British public finance and of British political memoirs. It will, however, come as a surprise to many students of British administrative and official economy to learn from Mr. Stamp that "only quite recently" has the clerical staff engaged in the collecting of the income tax and the compiling of income-tax statistics been "recognized" and established on an official basis.

It is not possible to trace that Lord Monkswell, the author of *The Railways of Great Britain* (New York, E. P. Dutton and Company, 1914; ix, 303 pp.) has an official or executive connection with any British railway company. Railway economy would seem to be a hobby with him. He undoubtedly, as his pages make manifest, derives continuous interest and pleasure from the study of railway equipment, stationary and moving, and of the intricate problems arising out of the operation of railways. He certainly has the faculty of communicating some of his interest and pleasure to the readers of his books on French and English and Scottish railways. His book on French railways was published in 1911. In his latest study of railway science he divides the great British railways into five geographical groups—the North Eastern and the Great Northern, lines that connect London with Edinburgh; the Midland and Lancashire and Yorkshire, which between them connect London with the manufacturing counties of Warwickshire, Staffordshire, Cheshire, Lancashire and Yorkshire; the London and North Western and the Caledonian, which connect London with the

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ports on the west coast of England and Wales, and with Glasgow and Edinburgh; the Great Western and the London and South Western, which connect London with Southampton, Exeter and Bristol; and the London and Brighton, the South Eastern and the Great Eastern, which serve London and the home counties. These railways have traffic conditions which may be described as peculiar to each. Some are due to the physical conditions of the country through which the railway runs; others to the character of the passenger and freight services which the railway must maintain. These conditions bring differences in equipment, stationary and moving, and also traffic problems of widely differing character. These characteristics, and many of the problems arising out of them, are described with much interest by Lord Monkswell—mostly from personal observation or investigation. About twenty excellently reproduced photographs of stations, bridges, sidings, and what English railway men describe as "rolling stock" accompany the text. The result is a book that is a noteworthy addition to a constantly growing library of the science of transport.

The railways of England were constructed piecemeal and haphazard, in short unconnected lengths, most of the lengths being built, owned and operated by different companies. There is no lack of proof of this statement. If proof were needed, it is forthcoming in the fact that in the decade from 1840 to 1850 no fewer than 535 acts were passed by Parliament authorizing the construction of new lines, in addition to 124 acts authorizing the amalgamation of existing railway companies or the purchase or lease of lines already in service. Amalgamation of railway undertakings began in 1834, when a bill was enacted for the union of two companies that had built or were building a line of railway not more than fifty-five miles long, from Newton in Lancashire to Preston in the same county, a line that is now part of the main line of the London and North Western Railway from London to Carlisle and thence to the Scottish border. Eleven companies, with an aggregate capital in 1913 of 893 millions sterling, today own railways in England of 13,631 geographical miles in length, with an aggregate trackage of 37,789 miles. Mr. Edward Cleveland-Stevens's scholarly monograph, *English Railways* (London, George Routledge and Sons, 1915; xvi, 332 pp.), is almost wholly concerned with the conditions under which the amalgamations from 1834 to 1900 were brought about, and particularly with the attitude and policies of Parliament towards their amalgamations and towards railway undertakings in general. England is even yet without an adequate and authoritative history of her railway system. There are good popular histories of the Midland and the

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Great Northern Railways. But for the railway system as a whole England is still dependent on Gustav Cohn's work of 1874–83. Mr. Cleveland-Stevens's book is an admirable contribution towards this much-needed history of English railways, especially the history of their relations to Parliament; and incidentally it is a concrete and eminently practical tribute to the comprehensiveness, availability and permanent value of the Acworth transport collection at the London School of Economics.

There are three distinct features in Mr. J. J. Harpell's *Candian Industry, Commerce and Finance* (Montreal, The Industrial and Educational Press, Ltd., 1915; 386 pp.). It embodies (1) an exposition of the general principles and practices of industry, commerce and finance; (2) a description, historical and statistical, of industry and commerce and finance in the Dominion, with statistics brought down to the year before the war; and (3) a dictionary of marketable commodities, and a directory of Canadian producers—mining, lumbering and manufacturing—which together occupy 169 pages. Obviously Mr. Harpell's book is intended chiefly for use in Canada; for one of its objects is to convey to Canadians some idea of the opportunities that lie before them in the resources of the Dominion, and in the facilities which Canadian institutions offer for education, trade and commerce. But as might be assumed in a book compiled by the author of *Canadian National Economy*, there is nothing characteristic of "boom literature" in Mr. Harpell's pages. Each of the numerous sections in the first two divisions is marked by careful and discriminating work; and the sections in which Mr. Harpell writes of Canadian finance are likely to be of service outside Canada by reason of the clear exposition of the banking system of the Dominion and also of the system of annuities which the Dominion government established in 1908.

The study of the subject of money and banking has been in the ascendant in this country since the panic of 1907. Notwithstanding a noteworthy production of general treatises and of special articles there has been felt an urgent need for a good book of selected readings. Two such books have now appeared. The first is Professor H. G. Moulton's *Principles of Money and Banking* (Chicago, University of Chicago Press, 1916; xl, 283, 502 pp.) This book is a counterpart of the books of readings on economics published in recent years by the University of Chicago Press. It is divided into two parts, one dealing with money and the other with banking, in which parts are gathered a large number of relatively short selections culled from numerous sources.

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The second book is Professor C. A. Phillips's *Readings in Money and Banking*. (New York, The Macmillan Company, 1916; 845 pp.). Professor Phillips's book contains fewer selections, but they are more comprehensive, and instead of letting them stand alone he weaves them together skilfully into a fairly complete and unified discussion of the subjects to which they appertain. Both books can be used with great advantage in combination with a good text.

Books on foreign exchange have found a ready market in this country owing to opportunities opened in this field of business by the Great War. Little can of course be added to the accepted theory of the subject, but the rapid developments in practice make possible always new and interesting practical material. William F. Spalding's *Foreign Exchange and Foreign Bills* (London and New York, Sir Isaac Pitman and Sons, 1915; xii, 216 pp.) explains the accepted principles, but in a new way, taking them up from the viewpoint of actual transactions in the market. There is a little confusion here and there, due to the incurable habit afflicting all writers on this subject, of fusing a heterogeneous mass of individual operations and speaking of them as a collective undertaking—for example: "New York might prefer to ship wheat or cotton rather than gold," etc., etc. To the initiated this is illuminating, but it is anything but clear to the novice. Mr. Spalding's treatment of bills, however, even though written from the English point of view, is very helpful.

Mr. A. Barton Hepburn is a practical banker who has also always enjoyed an enviable reputation as a student and publicist. His book on the *History of Currency in the United States* (New York, The Macmillan Company, 1915; xv, 552 pp.) shows the breadth of his study in his chosen field. The book is much more than a purely monetary history. It deals with fiscal and with banking history and problems wherever these are even indirectly connected with the currency system. Moreover, throughout its pages it reflects in questions of banking and financial policy the maturity and soundness of judgment for which Mr. Hepburn has always been noted.

Business—A Profession (Boston, Small, Maynard and Company, 1914; lvi, 327 pp.) is a collection of the addresses and writings of Louis D. Brandeis. The book takes its title from a commencement address delivered at Brown University in 1912 in which Mr. Brandeis makes an effective plea for a higher conception of the function of the business man. Almost all of the material has already seen the light in the form of magazine articles but it is well to have in a single binding the interesting and valuable economic and social views of the new justice of the

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Supreme Court. As a foreword, Mr. Ernest Poole's characterization of Mr. Brandeis is reprinted from the *American Magazine*.

Several additional volumes in the La Salle Extension University series have recently appeared. Ernest L. Bogart's *Business Economics* (Chicago, La Salle Extension University, 1915; viii, 268 pp.) is a brief introduction to the field of economics written for the man who would be repelled by one of the usual college texts. The "practical" side of the subject is emphasized and theory reduced to the vanishing point. A somewhat unusual feature is the inclusion of several interesting chapters describing the mineral and agricultural resources of the United States. The book is well done and will serve its purpose admirably.

Louis Guenther, the editor of the *Financial World*, has written the volume called *Investment and Speculation* (Chicago, La Salle Extension University, 1916; xi, 289 pp.). After two short introductory chapters upon the general aspects of investment and speculation, he treats, *seriatim*, the various types of investment, including real-estate mortgages. The last half of the book is devoted to a discussion of speculation and the practice of the exchanges. The book is superficial and in places inexact, but it is interestingly written and contains some valuable illustrative material.

In *Industrial Organization and Management* (Chicago, La Salle Extension University, 1915; xv, 291 pp.) Professor Hugo Diemer attempts a comprehensive survey of a very large field. Practically all of the "non-commercial" topics are treated. The problems of general organization, of location and equipment, of buying and storing, of planning and accounting, of employment and wage payment are among those discussed. The author has had the advantage of both university and factory training, but his book shows much more evidence of the latter than of the former. Owing to the excessive brevity with which the topics are discussed, some are left very unclear to one unfamiliar with the general field. Moreover, it might be urged that more space should have been devoted to generalizing concerning the value and relative importance of the various methods and policies described. Both of these defects militate against the usefulness of the book as a text for college students. With readers who are themselves familiar with practical factory conditions they are of less importance.

Three men coöperate to produce the volume on *Credits and Collections* (Chicago, La Salle Extension University, 1916; xi, 266 pp.). The first half-dozen chapters, devoted to credits, are written by Edward M. Skinner, who in his preface acknowledges with commendable

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frankness that Stephen Gilman "has done most of the work." This essay of 120 pages is probably the best brief treatment of the subject yet available. Avoiding the error which so many business men have made in their writing, of presenting as a full treatment of the problem a description of some successful credit department, the authors in this case have confined their discussion in the main to general principles. They have not neglected, however, to supply numerous illuminating examples drawn from actual practice. But these are presented in their proper perspective in the course of a well-balanced general discussion. The sections on collections written by R. S. White and on instalment collections by H. E. Kramer, are interesting and satisfactory.

In *The Science and Practice of Management* (New York, The Engineering Company, 1914; xviii, 535 pp.) Mr. A. Hamilton Church excludes questions dealing with selling, distribution and finance and confines himself solely to the consideration of the actual manufacturing of the product. In manufacturing industry he distinguishes what he terms five organic functions: design, equipment, operation, control and comparison. The nature of these organic functions may be described by saying that they represent varieties of effort—"effort applied in five different ways to produce five different kinds of results." The writer then distinguishes what he terms three laws of effort. The first is that "experience must be systematically accumulated, standardized, and applied" (page 112). The second law of effort deals with the "division, coördination, conservation and remuneration of effort," or, more broadly, effort must be "economically regulated." The third law of effort is that "personal effectiveness must be promoted" (page 208). The volume deserves careful examination by those who are dealing with manufacturing organization and by any others who may be interested therein, either as teachers or students of the subject. It deserves especial attention as representing a pure theoretical treatment of manufacturing which endeavors systematically to formulate and develop certain laws and rules of general applicability thereto. The volume is an important contribution to the science of business organization which is gradually being developed by a number of men interested in the efficiency movement, by several business men who are now studying and writing on this subject, and to a less degree by an academic group in the colleges and schools of commerce in the United States.

Mr. Paul E. Neystrom's *Retail Selling and Store Management* (New York, D. Appleton and Company, 1914; xxiii, 280 pp.) is a pioneer volume in a field that has hitherto been scarcely touched by writers on

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business economics. The book will undoubtedly be of great assistance and value not only to store managers but also to those who are actually engaged in retail selling. In the first portion of the book we have chapters dealing with "the salesman", "the psychology of selling", "how instinct aids in selling", "attracting attention", "arousing interest, desire and determination", "closing the sale", and "special problems in retail salesmanship." These are chapters designed for the improvement and assistance of the retail sales person. On the other hand, several of the chapters deal specifically with the problem of store management, as is indicated by the following topics: "leaks and losses in retail stores," "window display," "efficiency in store organization," "store policy," "cost of selling," "retail advertising," "credits and collections." Each chapter in the volume is subdivided into topics dealing with specific phases of the chapter in which it is found. The discussion is very concrete, giving specific suggestions and illustrations and containing on the whole comparatively little material that does not go directly to the particular points under discussion.

In *Getting the Most out of Business* (New York, The Ronald Press Company, 1915; xx, 483 pp.) Mr. E. St. Elmo Lewis, one of the best known advertising men in the country, attempts to apply certain principles of efficiency to the departments of business outside of the manufacturing organization. He gives much useful information, badly organized. Whatever may be the minor defects of Mr. Lewis's volume, however, it is none the less a valuable piece of work. It contains discussions of the National Cash Register school for salesmen, the utilization of standard practice instructions, the use and value of the sales manual, executive organization, including the application of line and staff principles, wage payments and methods etc. This fact alone would remove the book from the class of volumes that deal in generalities giving the reader neither concrete reasoning nor concrete applications to actual conditions. No student or reader of business organization ought to neglect a perusal of those parts of the volume dealing with the subjects just referred to.

Amos Kidder Fiske, who has long been favorably known as the author of *The Modern Bank*, has formulated his analysis of the ills which beset the social body and his remedy for the same, and presents them in a book entitled *Honest Business—Right Conduct for Organizations of Capital and Labor* (New York, G. P. Putnam's Sons, 1914; vii, 333 pp.). There is great injustice in the distribution of wealth, he believes, due in part to the institutions of inheritance and the private

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ownership of land but chiefly to a lack of mere honesty. There should be a real union between economics and ethics. "The one thing most needed in solving the problems of labor and capital and the relations of business to the general well-being is simple honesty in the dealings of men with each other and with the public" (page 8). "Persistently applied", he states in another place, "it [honesty] would be a solvent of all difficulty" (page 331). As to what honesty is in the difficult situations which abound in our industrial life Mr. Fiske is somewhat vague. Distribution, he says, should be made on the basis of productivity, but in cases of dispute as to the application of the rule he suggests nothing more fundamental than an "impartial tribunal upon which both sides to the partnership of labor and capital are represented, to fix the terms of apportionment" (page 330).

A handy manual dealing with technical education is that prepared by Professor F. W. Roman of Syracuse University, entitled *The Industrial and Commercial Schools of the United States and Germany: A Comparative Study* (New York, G. P. Putnam's Sons, 1916; xv, 382). Although somewhat sketchy in form, the book brings out its main points satisfactorily by considerable citation from original material and by statistical apparatus. The survey is comprehensive rather than detailed, and the conclusions, as would naturally be the case, fairly obvious though there is a little comfort to be got from the fact that we have achieved our industrial position in spite of the lack of such schools (page 362).

Mr. Joseph Husband has written a series of brilliant little sketches entitled *America at Work* (Boston, Houghton Mifflin Company, 1915; 111 pp.). The description of a ride in the cab of an express locomotive which is the subject of the essay entitled "Semaphore" is one of the finest and most convincing bits of word-painting of its kind. The description of Gary in the third essay is touched with genuine imagination. While the book is but slight, it holds high promise.

One of the striking aspects of our recent industrial development has been the tendency among large establishments to abandon the cities and locate in new towns established for their own purposes. The social problems occasioned by this movement are treated by Mr. Graham R. Taylor in *Satellite Cities* (New York, D. Appelton and Company, 1915; xviii, 333 pp.). The book consists of a series of articles originally published in *The Survey*, which set forth much interesting information concerning economic, social and political conditions gathered by visits to a large number of towns. A chapter is contributed by Jane Addams in which she analyzes the causes underlying the failure of

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the famous Pullman experiment. Students of housing and city planning will find the volume very useful.

Those desiring a handy compendium of facts relating to the progress of the negro race in the United States will find it in the *Negro Year Book* (Tuskegee, The Negro Year Book Publishing Company, 1916; x, 470 pp.) edited by Monroe N. Work. The volume for 1916–1917 is the fourth annual edition. The greater part of the material consists of a revision of that published in the earlier editions, but there are over 100 pages of new matter, dealing mainly with recent events from the standpoint of their effect on the negro.

An evidence of scientific interest in the negro problem in the South is the establishment of the Phelps-Stokes fellowship in the University of Virginia for the special study of the negro problem. As a result of this fellowship two volumes have recently appeared. One is a study of *Rural Land Ownership Among the Negroes of Virginia* (Charlottesville, The University of Virginia, n. d; 110 pp.), by Samuel T. Bitling. The study is confined largely to Albermarle County. The author's conclusion is that the negro's problem is chiefly an economic one and that his best opportunity is in farming, where his lower standard of living than his white competitor tends to compensate for the superior efficiency of the latter. With the influx of immigrants with low standards of living, the negro will, however, be compelled to increase his efficiency in order to retain the economic advantage which he now enjoys.

The other volume, entitled *Lectures and Addresses on the Negro in the South* (Charlottesville, University of Virginia, n. d., 128 pp.), contains eight lectures by Southern men on various aspects of the negro problem. Though of varying merit, they are important as an index to what earnest Southerners are thinking about the negro. In discussing justice between the races Mr. Clarence Poe notes that the negro by reason of his lower standard of living is driving the white farmer from agricultural pursuits and affirms that to establish the economic equality of the white farmer the first step must be race-segregation in land ownership. Mr. William O. Scroggs, on the other hand, affirms that "the scheme of segregation is the most mischievious measure that has been proposed since the days of the old reconstruction." He insists that "if the whites suffer from the presence of masses of unskilled, low-standard colored labor, the obvious remedy is to take measures to increase its skill and raise its standards." Professor Ulrich B. Phillips shows that "in spite of the diminished efficiency of the general run of the negroes, the labor cost per pound of cotton is not so great [today] as it was in 1860, and that there is no tendency toward the unremitting enhance-

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ment of the labor-cost ratio such as there was in the slave-holding régime." Mr. Alfred Holt Stone says that the South has nothing to fear from the decent, self-respecting, law-abiding negro. He finds that there are as many different kinds of negroes as there are different kinds of white people and says that "there is not a negro dive, a crap joint or 'blind tiger' in any county in the South which does not exist through either the connivance or indifference of the white man." He emphasizes the "necessity upon the white man's part for arresting the growing tendency towards cleavage between the best elements of both races, the lessening of contact between the worst, and the restraining, so far as may be, of the forces and influences which make for the negro's physical, mental and moral degeneracy." Mr. James H. Dillard also urges that Southerners look at negroes as individuals and not in the mass. He finds that the negroes have cause to complain of their treatment in the lower courts and at the hands of employees of public service corporations and of the fact that school officials do not apportion a proper amount for negro public schools from the public funds. Mr. James Baudin writes a valuable paper on "Some Public Health Aspects of Race Relationships in the South" and Mr. D. Hiden Thamsey writes on "Negro Criminality", which he finds is "due in a measure to conditions which can be remedied."

Dr. Alexander Morgan's *Education and Social Progress* (London, Longmans Green and Company, 1916; vii, 252 pp.) is a detailed, well-arranged and illuminating examination of social and educational conditions in Great Britain and of the problems that confront educationalists and social reformers in England and Scotland. It is written with a view to emphasizing the now admitted fact that the diseases of society are not inevitable. Dr. Morgan's contention is that in England and Scotland—and, as principal of the Provincial Training College of Edinburgh, he writes chiefly of conditions in Scotland—too much attention has been devoted to adults and too little to the young. He is strong in the conviction that the child is the real center of the social problem; and in the spirit of this conviction he urges that the entire responsibility for the care and training of children of school age, except the invalid and the imbecile, should be placed on the local education authority. He insists that if all educational care of children were in the hands of the education authority, much ineffectiveness and wasteful overlapping would be prevented, and an opportunity would be given of enforcing parental responsibility. "With its great teaching force, its doctors, nurses, care committees, and attendance officers," writes Dr. Morgan, "our educational system has unrivalled

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means of dealing successfully with the physical, moral and economic disabilities that start in childhood and persist through life." Dr. Morgan has a clear conception of some of the problems that will at once confront the United Kingdom in the new era that will begin at the end of the war. He writes of these problems and their origin with clearness and force; and it is the admitted existence of these after-the-war problems in Great Britain that gives *Education and Social Progress* its interest for American students who are awaiting the new Britain that will issue from the great war.

The Challenge of Facts and Other Essays (New Haven, Yale University Press, 1914; xii, 450 pp.) is the title which Professor Albert Galloway Keller of Yale University has given to the third volume of essays which he has compiled from the notes and writings of the late Professor William Graham Sumner. The "economic-ethical" title-essay, which its author labeled "Socialism" and which the editor has rechristened, was probably written in the eighties and must be read as the opinion of one who, over a quarter of a century ago, was looking forward. It is an ardent protest against socialistic schemes of equalization. After presenting various economic and social generalizations in a dogmatic but thought-stimulating form Professor Sumner arrives at a point where he says: "Let it be understood that we cannot go outside of this alternative: liberty, inequality, survival of the fittest: non-liberty, equality, survival of the unfittest. The former carries society forward and favors all its best members; the latter carries society downward and favors all its worst members" (page 25). "Advancing Social and Political Organization in the United States" is another of the hitherto unpublished articles. It is an unusually interesting bit of social history in which the author has applied the theories, so well presented in his *Folkways*, in a commentary on the development of institutions in the United States. These essays, most of which are grouped around the themes of liberty, democracy and responsible government, are valuable, not because of any evidence they contain, but because they are the views of a scholar who has critically and extensively analyzed social and economic phenomena. The dogmatic form of the advocate and the didactic expression of the teacher can be justified insomuch as they aid in provoking thought on the part of the reader. We are much indebted to Professor Keller for his painstaking efforts in gathering and presenting these, the more spontaneous and consequently more personal, expressions of Professor Sumner's feelings and judgments, together with the brilliant suggestions of his active and creative mind.

The doctrine of natural rights is still so far from extinct that it has

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today some adherents who hold it openly and many more who use it unconsciously as a justification for their preferences. Students of political science will therefore welcome a reprinting of the late David G. Ritchie's *Natural Rights* (Third edition, London, George Allen and Unwin, Ltd.; New York, The Macmillan Company, 1916; 304 pp.). In the review of the first edition in volume x, page 547 of this QUARTERLY, the merits of Professor Ritchie's contribution were summed up as follows:

> The book is valuable because its whole object and effect is to throw aside vague abstractions and pin debate down to definite, intelligible questions. The problem of toleration, the problem of the liberty of public meeting and association, the problem of the sanctity of contract—all are treated as soluble, not by any universal principle of *a priori* right, but by considerations of particular time and particular place, and with reference to the experience of the past. There may be in this method a negation of ultimate philosophy; but the loss of a philosophy incompatible with this treatment of political problems will not be serious.

Mr. Stephen Haley Allen's *Evolution of Government and Laws* (Princeton, Princeton University Press, 1916; 1221 pp.) is a ponderous tome describing most of the governments of the world, their structure and their operation, from the days of the Chaldeans to those of the initiative and referendum. There are chatty accounts of the personal affairs of monarchs, interesting descriptions of social customs, and moralizings on the way to bring up children and the best methods of selecting public officials. The author has read widely and has gathered into his book a wealth of fact and fancy. There are no foot-notes to distract the reader in his enjoyment of the text. Among the references given at the end of the various chapters, the *Encyclopaedia Britannica* appear most frequently. In the appendix are printed the Code of Hammurabi, the Penal Code of China, the Institutes of Justinian, the Code of Manu and other documents of similar character.

The first volume of *American State Trials* (St. Louis, F. H. Thomas Law Book Company, 1914; xxvi, 857), under the editorship of Professor John D. Lawson of the University of Missouri, contains accounts of twenty-four important criminal trials in American courts. From old pamphlets, newspaper files and court records the editor has gleaned the testimony of witnesses, the arguments of counsel and the charges of the judge in the trials which he gives. He has written a brief narrative of each case which puts the reader in touch with the story before he comes to the actual drama in the court room. This is the first of twenty volumes which will preserve the record of criminal trials in America, as *Howell's State Trials* and *Causes Celebres* have done for England and France.

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In *Principles of Judicial Proof* (Boston, Little, Brown and Company, 1913; xvi, 1179 pp.) Professor John Henry Wigmore has collected a wealth of important and interesting material bearing on the question of weighing evidence and reaching conclusions on controverted questions much before the courts for adjudication. The greater part of the material is drawn from the reports of judicial proceedings and from writers on psychology. This is supplemented by introductory excerpts from the compiler's *Treatise on Evidence*. Parts i and ii deal with the credibility of evidence, both circumstantial evidence and direct testimony. These are regarded by the author as merely preliminary to part iii, which deals with the method of reaching a correct solution from a mass of mixed evidence. The volume is not a text book on the law of evidence, for it is concerned, not with the legal rules of admissibility, but with proof in a more general sense—"the persuasion of the tribunal's mind to a correct conclusion by safe materials." It deals with the positive element in proof, rather than with negative elements. It is therefore of value to everyone interested in reaching wise conclusions or in persuading others in favor of such conclusions. It will be helpful to the historian no less than to the lawyer. It should help every reader to make his mental processes become increasingly conscious processes. This is all that the compiler claims for it, since he recognizes that "there are no known rules available to test the correctness of the infinite variety of inferences presentable in judicial trials." As a collection of cases in the method of forming judgments, this volume is commended to all engaged in this pursuit.

The Supreme Court and its Appellate Power under the Constitution (Albany, Matthew Bender and Company, 1913; xxi, 282 pp.), by Edwin Countryman, is a vigorous philippic against the Supreme Court. The complaint is that they have failed to exercise the prerogatives conferred upon them by the Constitution by declining to wield their authority to the full over the insular possessions, by declining to entertain suits against the United States and against officers of a state or of the United States, by permitting Congress to tinker with their appellate jurisdiction, and by failing to undertake to determine whether the government of any state is republican in form. "If this latter duty is strictly performed," says Mr. Countryman, "all efforts to undermine the Constitution by the adoption in any state of the so-called initiative, referendum or recall, by which its representative institutions may be converted into an unbridled democracy, will be subdued at the outset" (page xx). If the court had not been so timid in the Insular Cases, "the country would have been spared the scandal and dishonor of reducing innocent

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and helpless people to its subjection and autocratic domination " (page ix). " Irrational conceit," " unconscionable outcome," " amazing judicial conclusion," " ruthless conquests " and other phrases tempt one to believe that Mr. Countryman's pen is dipped in anger as well as sorrow. His book will be perhaps most highly esteemed as a counter-irritant against the equally vehement charges of others that the Supreme Court has been guilty of gross usurpations of power.

The third edition of Mr. Frederick N. Judson's *Law of Interstate Commerce* (Chicago, T. H. Flood and Company, 1916; xxix, 1066 pp.) has made its appearance just four years after the second edition, which was noticed in volume xxviii, page 549 of this QUARTERLY. In the meantime Congress and the courts and the Interstate Commerce Commission have been so busy in making and applying new law affecting commerce that Mr. Judson's latest edition exceeds its predecessor by over 250 pages. His work continues to be the best in its field, but it still remains a hand-book rather than a treatise. Mr. Judson is content for the most part to let the courts speak for themselves and does not subject their decisions to the rigorous analysis and criticism of which he is capable. He is accurate in telling us what has been decided, but he refrains from showing how the courts might improve either their logic or their wisdom. There is still room for a work which will do for the law of interstate commerce what Freund has done for the law relating to the police power and what the late Judge Dillon did for the law of municipal corporations.

Dean James Parker Hall of the Law School of Chicago University has compiled for the Hornbook Case Series a collection of *Illustrative Cases on Constitutional Law* (St. Paul, West Publishing Company, 1914; viii, 508 pp.). The cases are selected and arranged for the purpose of illustrating the principles set forth and discussed in Black's *Constitutional Law*. This combination of text-book and case-book will be found very useful for private study and as an aid in undergraduate instruction.

Mr. Lawrence B. Evans's *Leading Cases on Constitutional Law* (Chicago, Callaghan and Company, 1916; xxix, 441 pp.) differs somewhat in method from Dean Hall's collection in that it is designed for use independent of any accompanying text-book. In the footnotes are given citations to judicial opinions amplifying the doctrines of the cases printed in the text and references to monographs and treatises bearing on the historical and legal aspects of the topics treated.

Professor Arnold B. Hall of the University of Wisconsin has brought out a revision of William P. Fishback's *Manual of Elementary Law*

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(Indianapolis, The Bobbs-Merrill Company, 1915; xxxi, 515 pp.) and thus brought down to date this most useful work. No other book is so well adapted to the needs of laymen desiring a general survey of the common law. Its scope is much broader than that of the numerous handbooks on commercial and business law, since it includes as well the law of torts, crimes, property, domestic relations and procedure. There are also chapters on constitutional, administrative and international law.

The wisdom of publishing in book form a series of lectures delivered to popular audiences is often open to question. The practice may have a tendency to improve the quality of the lectures, but the fact that the lectures were delivered to popular audiences is sometimes an excuse for putting into print what does not deserve preservation. Mr. Henry St. George Tucker delivered five lectures in the Storrs lecture course in the Yale University Law School on the subject of "Local Self Government." These are now printed in book form under the title *Woman's Suffrage by Constitutional Amendment* (New Haven, Yale University Press, 1916; 204 pp.). The title originally given to the lectures more accurately describes their scope. The author objects to any increase of powers by the federal government. Of the federal child-labor law he says: "Has our political history ever shown a clearer example of the lust for power by Congress than this, or a bolder attempt at spoliation and robbery of the states?" The real issue involved in that statute, he says, is "not the broad sympathy for suffering childhood, but a desire to protect certain interests from ruinous competition in other parts of the country." The importance of local self-government is illustrated by the fact that a tax on dogs "never fails to touch mankind in a tender spot." There are three pages on the dog, introduced by the statement that "the stately spinster in the city, whose affections have never been wasted on a mere man, often gives freely of them to some pampered poodle" (page 107). The book is an impassioned plea for maintaining the powers of the states and of the United States "in a just equilibrium for the preservation of the liberty of American citizens." The point of view which Mr. Tucker urges should not be dismissed until we have heard a better advocate.

State Constitution Making (Nashville, Marshall and Bruce Company, 1916; xi, 472 pp.) by Wallace McClure, though designed especially as a contribution to the problem of revising the state constitution in Tennessee, will nevertheless have a wider field of usefulness. Parts i and iii give a history of constitutional development in Tennessee and a

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discussion of peculiar Tennessee problems, but part ii, entitled "Current Thought and Action Upon Constitutional Problems," will be found serviceable by all students of state government. The author brings together in convenient form the state constitutional provisions on such subjects as elections, organization of state governments, the short ballot, the budget, municipal and county government, organization and procedure of the legislature, direct legislation by the electorate etc., and adds excerpts from various writers who favor or oppose the several propositions that are likely to be brought before a constitutional convention. He has succeeded admirably in concealing any partisan bias, if he has one, and has presented opposing views with a clarity and fairness that are greatly to be commended.

It would be difficult to find a more succinct and comprehensive survey of the origin and development of the political and economic institutions of the United States than is presented in the first part of Professor William E. Rappard's *Notre Grande République Soeur* (Geneva, S. A. Sonor, 1916; 50 pp.). In the following part he summarizes with equal success the common parentage of these institutions in both Switzerland and America, drawing his materials not only from Borgeaud and Fleiner, but from many original sources as well. Particularly interesting is his account, here published for the first time, of the "pre-history" of the Swiss constitution of 1803. Mr. Rappard shows that Napoleon was greatly impressed by the American federal constitution at the time he was incubating the famous Act of Mediation. Switzerland's deep obligation to the United States is also emphasized in connection with her constitution of 1848, which, as amended in 1874, still remains the fundamental law of the Alpine Republic. This obligation is the more cordially admitted inasmuch as it was clearly due to Swiss influence that so many American commonwealths, beginning with 1898, adopted those instruments of direct democracy, the initiative, referendum and recall. And Professor Rappard intimates that in the quieter years to follow the war Switzerland may find it advantageous once more to imitate her great sister republic by establishing a single president, elected by the people and responsible to the people alone. A discussion of trade relations leads to the conclusion that a commercial treaty between the United States and Switzerland would be the least dangerous and most useful of any the Swiss may hope to form. "A commercial alliance between Switzerland and any European group of which both France and Germany were not at the same time members would be national suicide." The only criticism that may be made of this interesting and valuable "*conference*"—it seems invidious in an

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American to utter it—is that at times the author presents the United States to his Swiss fellow countrymen in a somewhat too favorable light.

The third volume of Dr. David J. Hill's monumental *History of Diplomacy in the International Development of Europe* (New York, Longmans, Green and Company, 1914; xxvi, 706 pp.) is entitled *The Diplomacy of the Age of Absolutism*. The first two volumes brought the story down to the Peace of Westphalia, which great settlement may be regarded as the true starting-point of the modern European political system. The latest volume covers one of the most fascinating periods in the history of diplomacy, considered as an elaborate technical interplay of personal and dynastic interests. The policy of Mazarin, the ambition of Louis XIV, the successful defense of the Dutch Republic, the tenacious diplomacy of William of Orange, the Grand Alliance and the War of the Spanish Succession, the rise of Russia, the settlement of Utrecht, the creation and the preservation of Prussia, the long duel between Great Britain and France for colonial empire and the partitions of Poland are but the leading features in this eventful epoch in which, to quote its historian, "the *raison d'Etat* becomes the controlling motive in public action and marks the period from the Peace of Westphalia to the Revolutionary Era as a reign of Machiavelianism." Dr. Hill's narrative is easy and lucid and his material is well-arranged. On the whole, due perspective is preserved, although occasional compression could be made to advantage. Especially does Dr. Hill show judicial appreciation of men and events, successfully avoiding any suspicion of theorizing or special pleading—which qualities will serve the author in good stead as he gets nearer our own times in the next two volumes promised us.

The well-known French author, Victor Bérard, has contributed to the polemic literature of the war a powerfully written book, *L'Eternelle Allemagne* (Paris, Armand Colin, 1916; 346 pp.), in which he attempts to show a parallel between the claims of the medieval empire or world-sovereignty and the designs of the Pan-Germanist movement of today. The first part of the book is historical—at least sufficiently so to make the point of a continuity of German ideals from the old forest-barbarians to the present. The second part is more to the point, a statement of the speculative character of much recent German business and the imperialist tendency of certain Kartells which are to the world of capitalism what the feudal aristocracy was to the Middle Ages. One might draw the inference that there was contrast rather than similarity between the two eras; but the validity of the argument of the book as a whole is not the main point after all. Its merit lies rather in

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its clarity of statement, chapter by chapter, and the discriminating reader can easily distinguish the lines of bias.

Under the uninforming title of *Fifty Years of American Idealism* (Boston, Houghton Mifflin Company, 1915; ix, 468 pp.) Mr. Gustav Pollak gathers together significant extracts from some seventy editorials in the *Nation* on important questions in American politics from 1865 to 1915. Brief introductory comments give the necessary background for understanding the passages quoted. The selections are too few to give anything but a meager account of the conflicts of opinion in the last fifty years. The object of the compiler is rather to select those editorials which best reflect "the spirit of the *Nation's* comments from year to year." The volume also contains twenty-four essays in literature, biography and history which have appeared in the *Nation* and the article on "The *Nation* and Its Contributors" which Mr. Pollak wrote for the semi-centennial number of that eminent American weekly. The editors of the *Nation*, past and present, may well be proud of the standards and the ideals which have dominated their work. One is tempted, however, to be sparing in praise, lest to justifiable pride be added a dash too much of self-complacency.

The matrimonial needs of the much-married Marquis of Northampton (1510–1571) created a parliamentary precedent that resulted in the House of Lords serving as a divorce court from 1551 to 1857; and even yet cases from Ireland go to the House of Lords. Similar functions have been exercised by the Senate at Ottawa since Confederation; for, of the nine provinces of the Dominion, only Nova Scotia, New Brunswick, Prince Edward Island and British Columbia have judicial systems that include divorce courts. The procedure in the cases before Parliament, which is fully and clearly described in Mr. B. V. Sinclair's *The Rules and Practice before the Parliament of Canada upon Bills of Divorce* (Toronto, The Carswell Company, 1915; 100 pp.), is much the same as it was in England when divorce cases were heard by the House of Lords. Petitions for divorce fall into the category of private bill legislation. At the commencement of each session nine senators are named as the Committee on Divorce. All petitions are introduced in the Senate and referred to the committee. Evidence is taken and counsel heard by the committee; and if the decision is in favor of relief for the petitioner, a divorce bill is drafted by the committee. In the Senate the bill is usually introduced by the senator who presented the petition. It is read a second and a third time; and then like any other bill—public or private—originating in the Senate, it goes to the House of Commons. Since the House of Commons has never passed

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any special rules relating to divorce bills, such bills are there governed by the rules and practices relating to private bills. Transcripts of the shorthand writers' notes of the evidence accompany a divorce bill to the Commons; and each member of the House is furnished with a copy of these notes. After second reading the bill goes to the private bills committee. There the evidence is considered; and if regarded as sufficient the bill is reported to the House for third reading, and the next and final stage is the royal assent. As was the case from 1551 to 1857 in England, when divorce bills originated in the House of Lords, only people in command of money can avail themselves of divorce legislation at Ottawa. There are preliminaries such as advertising that entail some expenditure; and before the Committee on Divorce will proceed on a petition, fees to the amount of $210 must be paid to the clerk of the Senate. Mr. Sinclair's manual was prepared primarily for the guidance of attorneys and barristers, but students of political science will also find it of service by reason of the insight it affords into parliamentary procedure at Ottawa and the light it throws on the history and working of the judicial system of the Dominion.

Mr. Joseph McCabe has written *The Influence of the Church on Marriage and Divorce* (London, Watts and Company, 1916; xv, 217 pp.) with a definite purpose. Although historical in form, it is intended as a contribution to the movement for reform of the divorce law of England—a movement which resulted in the appointment of a Royal Commission in 1910 to inquire into the need for such reform. The Commission reported in 1912, the majority advocating a moderate extension of the grounds of divorce along with an improvement in the administration of the law. Up to the breaking out of the war, no action had been taken on the report; and since the war began English people have been too much preoccupied with war problems to spare attention for this controversial social reform. Mr. McCabe takes the ground that the English divorce laws are an inheritance from the traditions of the early Catholic Church, that they constitute a code which, while it might be held binding on the consciences of members of that Church and of the Established Church of England which has followed the same traditions, ought not to be enforced by law on the nation at large. He argues that law ought to regard the social well-being and happiness of the people, and endeavors to prove that the rules concerning marriage and divorce enforced by the Catholic Church do not conduce, and are not intended to conduce, to social happiness—a matter in which the early churchmen took no interest. The extreme rigidity of the English divorce law—a rigidity which is due to the difficulty,

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experienced in 1857, of breaking through the old ecclesiastical traditions and persuading the House of Lords to pass the Divorce Act—is still causing grave misery in England today. Mr. McCabe makes no attempt to lay down the lines of reasonable divorce, or to determine its fitting limitations. His purpose in writing his book is to give a better comprehension of the problem by furnishing an historical background—a purpose which within the limitations of his space he has ably fulfilled.

Students of the history of American politics will find much useful and interesting material gathered together in *American Debate* (New York, G. P. Putnam's Sons, 1916; two volumes, xii, 467, ix, 417 pp.) by M. M. Miller, the editor of the fourteen volumes entitled *Great Debates in American History*. The present work, however, is not a mere compilation. The extracts from the more important debates are woven together into a connected narrative by the story of their historical background and setting. The opposing positions are brought out by placing in juxtaposition the antithetical arguments, so that we find what differing men have to say on specific topics. This topical arrangement of the arguments is a useful contribution. Brief sketches of the more important figures in American history add to the interest of the volumes. Mr. Miller has not brought to light anything previously hidden to historians but he has arranged familiar material in an interesting and useful fashion. Both volumes deal with personages and events prior to 1860. The first volume is concerned with constitutional questions, such as the rights of the colonies and the nature of the federal system established by the Constitution, while the second treats of the controversies over land and slavery. It is to be hoped that Mr. Miller will carry his work further and deal with the period from 1860 to the present.

Archdeacon Cunningham's *Christianity and Politics* (Boston, Houghton Mifflin Company, 1915; xi, 271 pp.) is, in the main, an examination of the differences of opinion between different bodies of Christians as to the mode of bringing Christianity to bear on political life—an examination which has for its object to ascertain how far each opinion has justified itself as a matter of practical experience. One message to the churches which Dr. Cunningham deduces from his examination is that it is greatly to be feared that the Christian minister who feels called upon to use the pulpit for political agitation is going outside the terms of his commission. A Christian minister has a trust imposed on him, and it is his duty to declare the eternal truth which has been revealed to man by our Lord. It is a matter of regret with Dr. Cunningham that much Christian energy should be diverted into

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channels where newspapers and public meetings can act with more effect—energy which should be directed to the welfare of the community, to work which Christianity can do, and which is in danger of being neglected if Christians fail to undertake it. The examination that Dr. Cunningham makes—which is always interesting to follow even if agreement with some of the presentations and conclusions is not possible—is based largely on conditions in England and Scotland. Interest quickens when the author draws on his wide and detailed knowledge of industrial and social history; and it cannot be said that the examination loses any interest by reason of the fact that it is obvious to which church Dr. Cunningham belongs, and not difficult to perceive on which side his sympathies lie in the many political questions that were in agitation in England in the decade preceding the war.

The Chronicles of Canada Series, edited by Professor George M. Wrong and Professor H. H. Langton, as now planned is to consist of thirty-two volumes, and to cover eight periods. These are (1) The First European Visitors; (2) The Rise of New France; (3) The British Invasion; (4) The American Invasion; (5) The Redmen in Canada; (6) Pathfinders and Pioneers; (7) Political Freedom and Nationality; and (8) National Highways. The first of the series to find its way to the POLITICAL SCIENCE QUARTERLY is Mr. W. Stewart Wallace's *The United Empire Loyalists: A Chronicle of the Great Migration* (Toronto, Brook and Company, 1914; ix, 148 pp.). The American part of the story is told with clearness and moderation. Equal care has been bestowed on the migrations of the Loyalists to what is now the Province of New Brunswick; to Prince Edward Island; to Chambly, St. John, Machiche and Quebec; and to the St. Lawrence townships in what is now the Province of Ontario. In describing these last migrations, Mr. Wallace emphasizes one interesting fact. The United Empire Loyalists who were of the Family Compact, and who by their Bourbonism did so much when they were in control at Toronto to bring about the rebellion of 1837 in Ontario, were not of the Loyalists who migrated directly from the United States to the British North-American Provinces. These aristocrats of the migration, as Mr. Wallace terms them, arrived in what was then Upper Canada, not in 1783, but in most cases after 1791. They had tried their fortunes in England before they determined on returning to the New World; or they had been of the first migrations to Nova Scotia and New Brunswick, and had later decided that better opportunities were to be had in Upper Canada. Mr. Wallace does not indicate the influence that the second division of Loyalists had on the political fortunes of Upper Canada between the

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establishment of representative institutions in 1791 and the Union of Upper and Lower Canada in 1841, apparently because he is to write another volume in the series devoted exclusively to the Family Compact and its influence. The migration of the United Empire Loyalists is an interesting episode in Canadian history and perhaps the most interesting in the history of British colonization since the Revolution of 1688. Every sympathetic student of the constitutional and economic development of the Dominion of Canada will welcome the new series—the most ambitious attempt to popularize Canadian history that has so far been made in the annals of publishing in Toronto or Montreal.

Mr. George Macauley Trevelyan's *Life of John Bright* (Boston, Houghton Mifflin Company, 1914; x, 480 pp.) must take high rank among biographies. It is less narrowly confined to the individual who is its central theme than is Morley's *Cobden* and for this reason gives a more adequate portrayal of the relations of the Manchester School to the politics of the time. Mr. Trevelyan's work would have been more complete if he had not been content to dismiss Bright's opposition to the Factory Acts in five pages. He concedes that Bright was "looking through the wrong end of the telescope" and that it was fortunate for England that the landlords were looking through the right end. He offers in extenuation of Bright the facts that he

> did not give to opposing the Factory Acts a quarter of the time and energy which he spent during the same year in attacking the Game Laws, a fiftieth part of what he afterwards devoted to winning the Franchise for the working men, or a hundreth part of what he had already spent in pulling down the Corn Monopoly. . . . It was not thus that he treated questions where his moral and intellectual passions were fairly roused [page 158].

But such mathematics furnish an inadequate method of appraisal. The biographer should not seek to minimize the blind-spots in a man whose vision on the whole was so broad and deep. The rest of Trevelyan's work deserves the highest praise. Bright's opposition to the Palmerstonian foreign policy, his unpopularity at the time of the Crimean War, and the verdict of approval which was accorded him in later years are presented in a way that brings out clearly their significance for all nations in all times. This story of a man whose whole life was devoted to instruction and persuasion in clearly defined policies should be read by everyone who plays any part on the stage of politics and government. The life of such a man as told by Mr. Trevelyan is an invigorating tonic for our sense of political values.

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Until Mr. John Howard Parnell published his memoir of *Charles Stewart Parnell* (New York, Henry Holt and Company, 1914; xi, 312 pp.), Peel was almost the only British statesman of the nineteenth century of whom a memoir had been prepared by a brother. Sir Lawrence Peel's sketch of the life and character of Sir Robert Peel, published in 1860, was the most valuable of the lives of Peel until Parker's three-volume biography was published in 1899; and even yet it admirably supplements what may be described as the detailed and official biography. As regards supplementing already existing biographies, the same may be said of Mr. Parnell's memoir of the great Nationalist leader. Parnell, with the chapter of tragedy that marked the last two years of his life, was a much more difficult subject for biography by a brother than Peel. But it is in writing of this tragedy that Mr. Parnell is at his best; for the story of the tragedy, and of the attitude of Nationalists, of Gladstone and of the Liberals, and also of the Parnell family, towards it, are told with a restraint and good taste that will everywhere meet with commendation. In writing this memoir Mr. Parnell has aimed to be to his brother what Bourrienne was to Napoleon, rather than what Carlyle was to Frederick the Great—"a humble follower of Boswell, elucidating character by seemingly trivial anecdotes rather than a didactic historian overwhelming his readers with dates and facts." In the first 120 pages, there is much that may at first reading appear trivial, much that could find its way only into an intimate biography. As the biography proceeds, however, most of this detail comes to have its value; and in the remaining 140 pages, which are concerned with Parnell's active, stormy and epoch-making life from 1876 to his untimely death at Brighton in October 1891, Mr. Parnell's treatment of his subject—still quite intimate in style—is excellent. He faithfully keeps his promise that the reader shall not be overwhelmed with dates and facts. Sufficient of them are given for his purpose, and quite sufficient for a reader who has even a fair general knowledge of British politics from 1876 to 1891. The result is a memoir that will strongly appeal to students who have already read Barry O'Brien's *Life of Parnell* and the other biographies, and a memoir that has a special value for more general readers, for whom one admirably written, fairly detailed and sympathetic life of Parnell will suffice.

In *Delane of The Times* (New York, Henry Holt and Company, 1916; x, 319 pp.) Sir Edward Cook makes and substantiates the claim that *The Times* of Delane—1841–1877—was a national institution, and that Delane of *The Times* deserves a place among the notable Englishmen of the Victorian era. It was part of his plan to trace with some

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detail the great influence of Delane on cabinets and on political thought and movements during the thirty-six years of his editorship. This necessitated an outline of the political history of England from 1841 to 1877, without which a full understanding of the influence that Delane exercised through *The Times* would have been impossible. This part of the work has been done with much thoroughness and care. But what gives the book its peculiar value is its study of Delane as the editor of *The Times* when it was the foremost newspaper printed in the English language and the most powerful of all organs of public opinion. Sir Edward Cook is himself a journalist of long and unusually varied experience; and in describing the man who was so long responsible for the world-wide organization of *The Times*, and also responsible for all its utterances on political questions, and for every paragraph that appeared in it, he has written an admirable study of English journalism in the nineteenth century. In describing the favorable conditions under which Delane achieved his successes, the author contrasts them with the often less favorable conditions which are the lot of many editors of English newspapers at the present time. Delane, as regards parliamentary reform and what is now called progressive legislation, belonged to the school of Palmerstonian Liberalism, which as Cook comments is "barely distinguishable from Conservatism"; and in the years of his editorship, the press as an organ for enabling public opinion to act on government was, in Cook's opinion, of at least equal importance with the platform and Parliament. Cook's final estimate of Delane is that he conducted a great newspaper for thirty-six years with unbroken success, reflecting various phases of dominant opinion, pledged to no party or set of politicians, but exercising a moderating influence between them. "This," Sir Edward Cook adds, "is not the only kind of ideal that an editor may pursue, but it is one at least neither unworthy nor narrow. Delane had his limitations, his prejudices, his weaknesses. His qualities and the defects of them were largely those of the governing classes of his day."

Mr. Hendrik Willem Van Loon has written a history, *The Fall of the Dutch Republic* (Boston, Houghton Mifflin Company, 1913; xii, 433 pp.), which attempts in a breezy and somewhat journalistic style to carry on the story of Holland from the time where Motley stopped. The field covered by it is, strangely enough, almost unknown to American and English readers, who seem to have lost interest in Holland after the days of William of Orange. One learns here how the narrow, commercial oligarchy, with extreme tendencies toward local rights and civic rivalries, failed to carry on the great career inaugurated by the

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Dutch in the seventeenth century. There is also a chapter on economic development, but Mr. Van Loon does not enter into a study of the effects of Dutch liberalism on foreign trade, which, in the eyes of the Tariff Reform Party of England, was the main factor in the fall. He rather indicates the rivalry of England and the lack of naval preparedness as the essential factor. The story is told in a kindly sort of way, with considerable literary skill, and should appeal to the general reader as well as to the college class.

A general survey of the Western Orient and Europe from B. C. 44 to A. D. 1453 is still, in spite of Gibbon's genius, a legitimate field for historical enterprise. The drift of world politics today gives an additional interest to such a history when it bears the attractive title *East and West through Fifteen Centuries* (Longmans, Green and Company, 1916; xxvi, 605, xii, 675 pp.) which Brigadier-General G. F. Young has given to his work, of which two volumes—out of four—are now published. The volumes are imposing in size and attractively gotten up. A series of illustrations in half-tone runs through the text and an apparatus of maps is added. But as for the history itself one is compelled to admit, as one lays it down, a saddening sense of the unrealized possibilities. The author is not without a sense of the need of keeping up with recent scholarship, and has familiarized himself with its results where they are readily accessible. But the book is written without a real mastery of the technique of scholarship, and in some ways its conclusions seem little short of crude. It is surely at least a questionable judgment to regard Constantine as the greatest of all the emperors; but, whatever one may think of his personal genius, the empire under him did not reach "a higher plane of civilization and enlightenment than before." There is no hint of the social and economic decay which made his vast empire a hollow shell, and only a familiar narrative of the so-called migrations. The style is straightforward and reveals the honesty of purpose of the author, who as an amateur has done well. But this is not a task for amateurs.

The Manchester University Press continues to publish the excellent series of historical texts and studies of which mention has been made in earlier numbers of this QUARTERLY. Two volumes have recently appeared which will add to the high regard in which this series is held by all students of history. The chronicle of John of Reading, monk of Westminster, covering the years 1346 to 1367, and the parallel annal known as the anonymous Canterbury Chronicle, have been brought together and edited with exhaustive textual and historical notes by the competent hand of Professor James Tait, under the title, *Chronica*

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Johannis de Reading et Anonymi Cantuariensis, 1346–1367 (Manchester, at the University Press, 1914; xi, 394 pp.).

Likewise the text of *The Incendium Amoris of Richard Rolle of Hampole* (Manchester, at the University Press, 1915; xxi, 284 pp.) has been edited and published by Margaret Deanesly in the same series. This fourteenth-century hermit and poet should be of interest to all students of medieval mysticism, and his Latin works have not been published before. The work of the editor has apparently been done with scrupulous care and the apparatus is helpful for a further study of the mystical trend to which Rolle contributed.

In the last few years a great change has come over the character of history text-books. The social and descriptive history has largely replaced the old, annalistic manual. The change has been especially notable lately in English history where the dynastic outlines held their own longer than our presidential divisions. But few better books for schools can be found, so far as interesting and picturesque narrative goes, than Dr. F. W. Tickner's *Social and Industrial History of England* (London, Longmans, Green and Company, 1915; xii, 721 pp.), which covers practically all phases of the nation's life except the purely political. Unfortunately, for American high-school use it contains some details which lie quite beyond the sphere of secondary school culture—as for instance in the matter of Elizabethan literature—but a discriminating teacher will find it very useful; and for junior college classes it should be a welcome handbook.

The handy little volume by Mr. George M. Priest of Princeton University entitled *Germany Since 1870* (New York, Ginn and Company, 1915; xvi, 199 pp.) is well arranged and clearly written, and while obviously intended for the class-room should be of service to the general reader as well.

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